

No. 12401

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United States  
Court of Appeals  
For the Ninth Circuit.

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UNITED STATES OF AMERICA,  
Appellant,  
vs.

FOSTER TRANSFER COMPANY, a Corporation,  
Appellee.

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Transcript of Record

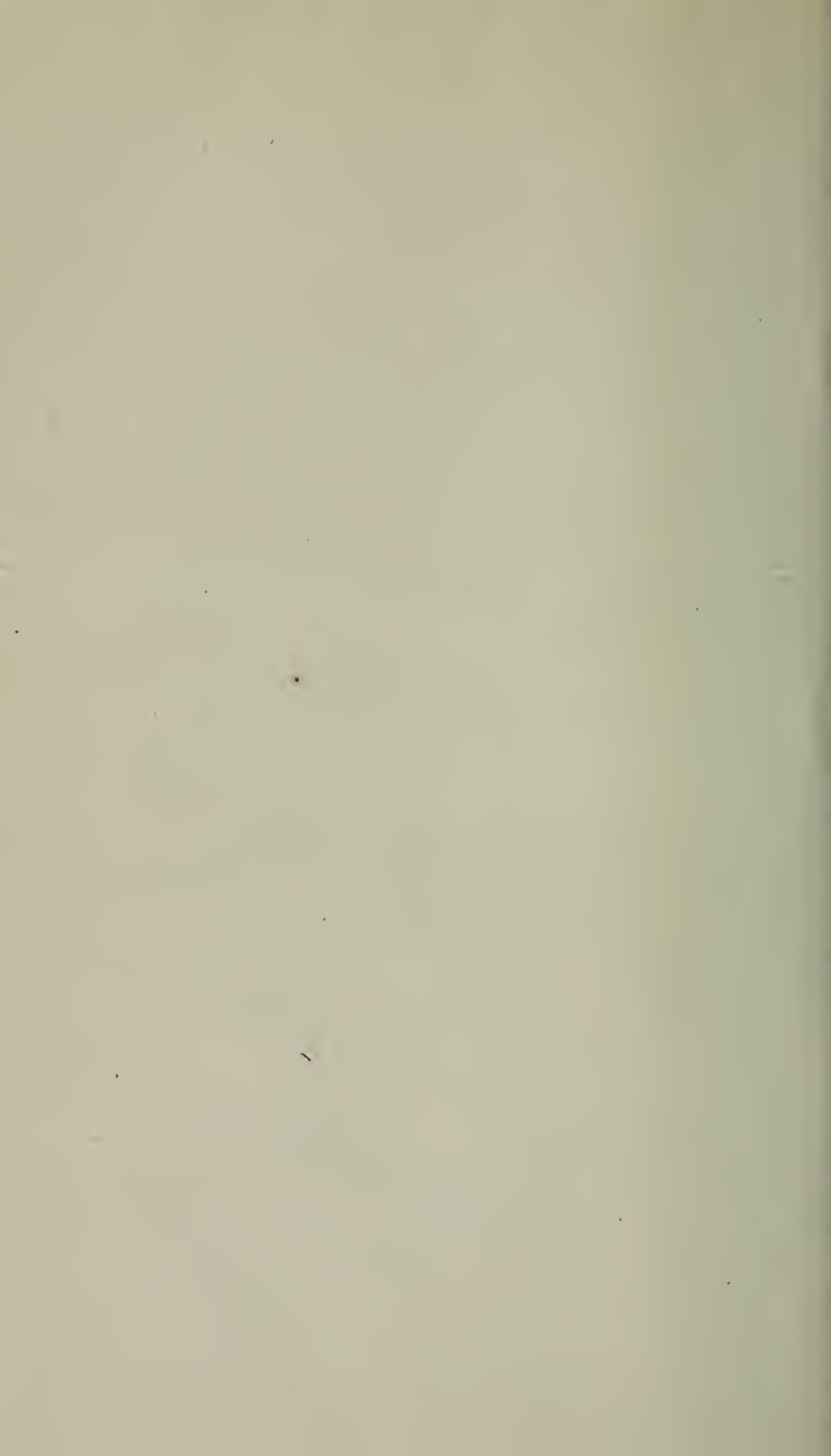
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Appeal from the United States District Court,  
Western District of Washington,  
Northern Division.

**FILED**

FEB 2 - 1950

**PAUL P. O'BRIEN,**  
CLERK



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Western District of Washington,  
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF COUNSEL

J. CHARLES DENNIS and

VAUGHN E. EVANS,

Attorneys for Appellant,

1017 United States Court House,

Seattle 4, Washington.

HAROLD A. SEERING of

MAXWELL, SEERING, JONES & MERRITT.

Attorneys for Appellee,

4454 White-Henry-Stuart Bldg.

Seattle 4, Washington.

In the District Court of the United States for the  
Western District of Washington, Northern  
Division.

No. 1787

FOSTER TRANSFER COMPANY, a Washing-  
ton Corporation,

Plaintiff,

vs.

THE UNITED STATES,

Defendant.

### COMPLAINT

Comes now the plaintiff, and for cause of action  
against the defendant, alleges:

#### I.

This action arises under the Act of Congress  
of March 3, 1887, C. 359 24 Stat. 505; U. S. C.  
Title 28 Section 41 (20). That the action is one  
upon an express contract and the amount in con-  
troversy does not exceed Ten Thousand (\$10,-  
000.00) Dollars, as hereinafter more fully ap-  
pears.

#### II.

That plaintiff is a corporation organized and  
existing under the laws of the State of Washing-  
ton, with its principal place of business in Seattle,  
King County, Washington. That it has paid its  
annual license fee last past due said State.

## III.

That the Treasury Department is an executive department of the United States, and that within such department is established the Procurement Division, which is charged by law with the procurement of contracts for services and supplies for the United States. That William B. Ihlanfeldt is regional director of the United States Treasury Department, Procurement Division for Region XI, with its headquarters in Seattle, Washington.

## IV.

That on the 26th day of June, 1945, the United States Treasury Department Procurement Division, entered into a contract with plaintiff, the same being Contract No. T11 RP-156. The said contract provided for the performance by plaintiff for the United States Treasury Department Procurement Division, of certain transportation services therein specified, the effective period of the contract being July 1, 1945 to and including June 30, 1946.

## V.

That plaintiff fully and faithfully performed all things required of it under the provision of said contract. That notwithstanding such performance by plaintiff, the defendant, through its Treasury Department Procurement Division, William B. Ihlanfeldt, Regional Director for Region XI,

wrongfully, arbitrarily and without cause, cancelled said Contract No. T11 RP-156, effective February 28th, 1946. That as a result of the wrongful action of the defendant, plaintiff has been deprived of its profits for the unexpired portion of such contract, and as a result thereof has been damaged in the sum of Five Thousand (\$5,000.00) Dollars.

## VI.

That plaintiff is the sole owner of the claim herein sued upon, and that no assignment of such claim or any interest therein has been made to any person. That no other action has been had on said claim in Congress or by any of the defendants.

Wherefore, plaintiff prays for judgment against the defendant in the sum of Five Thousand (\$5,000.00) Dollars, together with its costs and disbursements herein to be taxed.

MAXWELL, SEERING &  
JONES,

By /s/ MAXWELL, SEERING &  
JONES,

Attorneys for Plaintiff.

State of Washington,  
County of King—ss.

H. L. Doolittle, being first duly sworn upon his oath, deposes and says:

That he is President of the above named plaintiff, Foster Transfer Company, a Washington Cor-



poration; that he has read the within and foregoing Complaint, knows the contents thereof and believes the same to be true.

/s/ H. L. DOOLITTLE.

Subscribed and Sworn to before me this ..... day  
of December, 1946.

/s/ HAROLD A. SEERING,  
Notary Public in and for the State of Washington,  
residing at Seattle.

[Endorsed]: Filed April 5, 1947.

[Title of District Court and Cause.]

### SUMMONS

To the Above-Named Defendant: United States  
of America.

You are hereby summoned and required to serve upon Maxwell, Seering & Jones, plaintiff's attorneys, whose address is 4454 White-Henry-Stuart Building, Seattle 1, Washington, an answer to the complaint which is herewith served upon you, within sixty (60) days after service of this summons upon you, exclusive of the day of service. If you fail so to do, judgment by default will be taken against you for the relief demanded in the complaint.

MILLARD P. THOMAS,  
Clerk of Court.

[Seal] By /s/ PERCY MADDUX,  
Deputy Clerk, U. S. District Court, Western District of Washington.

Dated: April 5, 1947.

Affidavit of mailing attached.

Return on service of writ acknowledged.

[Endorsed]: Filed April 17, 1947.

[Title of District Court and Cause.]

ANSWER

Comes now the defendant in the above entitled cause and for answer to the Complaint on file herein, admits, denies and alleges as follows:

I.

Defendant admits the allegations of paragraph I.

II.

The defendant alleges it does not have sufficient information to form a belief as to the truth of the allegations in paragraph II and therefore denies the same.

III.

Defendant admits the allegations of paragraphs III and IV.

IV.

Defendant denies the allegations of paragraph V and specifically denies that the plaintiff has been damaged in the sum of \$5,000 or in any other sum whatsoever.

V.

Answering paragraph VI the defendant alleges it does not have sufficient information to form a belief as to the truth of the allegations therein and therefore denies the same.

And by way of Further Answer and Affirmative Defense, the defendant alleges as follows:

## I.

That on the 26th day of June, 1945, the defendant, acting by and through the Procurement Division, Treasury Department, entered into Contract No. T11rp-156 with plaintiff.

## II.

That Article 21 of the Special Conditions of the said contract provides as follows:

“21. The Government reserves the right to cancel the contract at any time for what may be deemed good and sufficient cause.”

## III.

That Article 3 of the General Provisions of said contract provides as follows:

“3. Disputes—Except as otherwise specifically provided in this contract, all disputes concerning questions of fact arising under this contract shall be decided by the contracting officer, subject to written appeal by the contractor within 30 days to the Secretary of the Treasury or his duly authorized representative, whose decision shall be final and conclusive upon the parties hereto. In the meantime the contractor shall diligently proceed with performance.”

## IV.

That subsequent to the execution of the said contract and on or about the 26th day of June, 1945, the plaintiff herein began the performance of said contract; that the plaintiff did not fully and faithfully perform and comply with the provisions

of the said contract and that thereafter and on February 20, 1946, the said contract for good and sufficient cause was cancelled by the Contracting Officer, William B. Ihlanfeldt, Regional Director, Procurement Division, Treasury Department, Seattle, Washington, cancellation to be effective on February 28, 1946; that plaintiff on or about March 8, 1946, filed a notice of appeal with the Secretary of the Treasury appealing from the action of the Contracting Officer in cancelling the said contract; that on July 11, 1946, the plaintiff's appeal to the Secretary of the Treasury was denied and the action of the Contracting Officer in cancelling said contract was sustained; that pursuant to provisions of said contract, the plaintiff is not entitled to recover any sums of money whatsoever from the defendant.

Wherefore, having fully answered the complaint of the plaintiff herein, defendant prays that the same be dismissed and that it recover its costs and disbursements herein to be taxed.

/s/ J. CHARLES DENNIS,  
U. S. Attorney.

/s/ FRANK PELLEGRINI,  
Assistant U. S. Attorney.

State of Washington,  
County of King—ss.

Frank Pellegrini, being first duly sworn, on oath deposes and says:

That he is one of the attorneys of record for

the defendant herein and as such makes this verification for and on its behalf as he is authorized so to do; that he has read the within and foregoing answer, knows the contents thereof, and believes the same to be true.

/s/ FRANK PELLEGRINI.

Subscribed and sworn to before me this 7th day of June, 1948.

[Seal] /s/ VAUGHN E. EVANS,  
Notary Public in and for the State of Washington,  
residing at Longview.

Receipt of copy acknowledged.

[Endorsed]: Filed June 8, 1948.

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[Title of District Court and Cause.]

## REPLY

Comes now the plaintiff and for reply to the affirmative defense in defendant's Answer, admits, denies and alleges as follows:

### I.

Replying to Paragraph I, admits the allegations thereof.

### II.

Replying to Paragraph II, admits the same.

### III.

Replying to Paragraph III, denies the allegations of this Paragraph.

IV.

Replying to Paragraph IV, admits that plaintiff undertook, the performance of said contract and did faithfully perform, and that said contract was thereafter cancelled; that plaintiff filed a Notice of Appeal as therein alleged, which Notice of Appeal was denied.

Otherwise, plaintiff denies each and every remaining allegation in said paragraph contained.

MAXWELL, SEERING,  
JONES & MERRITT,  
Attorneys for Plaintiff.

/s/ HAROLD A. SEERING.

State of Washington,  
County of King—ss.

Harold A. Seering, being first duly sworn upon his oath, deposes and says:

That he is the attorney for the plaintiff herein and as such makes this verification for and on its behalf as he is authorized so to do; that he has read the within and foregoing Reply, knows the contents thereof, and believes the same to be true.

/s/ HAROLD A. SEERING.

Subscribed and Sworn to before me this 29th day of July, 1948.

[Seal] /s/ ELTON B. JONES,  
Notary Public in and for the State of Washington  
residing at Seattle.

Receipt of copy acknowledged.

[Endorsed]: Filed August 2, 1948.



[Title of District Court and Cause.]

## FINDINGS OF FACT AND CONCLUSION OF LAW

This matter having come on this day before the undersigned Judge of the above entitled court, plaintiff appearing by Harold A. Seering, its attorney; defendant appearing by J. Charles Dennis and Vaughn E. Evans, its attorneys; and the action having heretofore been heard and tried before the undersigned on the 2nd and 3rd days of August, 1949, witnesses having been sworn and testimony adduced and thereafter on the 5th day of August, 1949, the court having heard the argument of counsel and having orally announced its decision, the court does now make the following:

### Findings of Fact

This action arises under the Act of Congress of March 3, 1887, C. 359 24 Stat. 505; U. S. C. Title 28 Section 41 (20). That the action is one upon an express contract and the amount in controversy does not exceed Ten Thousand Dollars (\$10,000.00), as hereinafter more fully appears.

### II.

That plaintiff is a corporation organized and existing under the laws of the State of Washington, with its principal place of business in Seattle, King County, Washington. That it has paid its annual license fee last past due said State.



## III.

That the Treasury Department is an executive department of the United States, and that within such department is established the Procurement Division, which is charged by law with the procurement of contracts for services and supplies for the United States. That William B. Ihlanfeldt is regional director of the United States Treasury Department, Procurement Division for Region XI, with its headquarters in Seattle, Washington.

## IV.

That on the 26th day of June, 1945, the United States Treasury Department Procurement Division, entered into a contract with plaintiff, the same being Contract No. T11 RP-156. The said contract provided for the performance by plaintiff for the United States Treasury Department, Procurement Division, of certain transportation services therein specified, the effective period of the contract being July 1, 1945 to and including June 30, 1946.

## V.

That the contract between the parties hereinabove referred to contains, among other provisions, the following:

“The Government reserves the right to cancel the contract at any time for what may be deemed good and sufficient cause.”

That plaintiff entered upon the performance of its contract, hereinabove referred to, on the 1st day of July, 1945; that during the performance of the

contract defendant received several complaints as to the work performed by plaintiff. That the defendant, through William B. Ihlanfeldt, Regional Director for Region XI, Treasury Department, Procurement Division, for just cause, by letter of February 20, 1946 mailed to the plaintiff, cancelled said contract No. T11 RP-156, effective February 28, 1946.

## VI.

That the period of time granted by defendant before the taking effect of the cancellation was unreasonable under the circumstances in that it did not extend sufficient time to plaintiff to protect itself against certain fixed expenses necessarily incurred to enable it to perform its contract with defendant. That these expenses consisted of trucks and warehouse leased by plaintiff and salaries of office employees whose services were no longer necessary after the cancellation of said contract. That by reason of the unreasonably short notice extended by defendant, plaintiff has been damaged in the sum of Fifteen Hundred (\$1500.00) Dollars.

Done in Open Court this 15th day of August, 1949.

/s/ JOHN C. BOWEN,  
Judge.

From the Foregoing Findings of Fact, the Court Does Make the Following:

## Conclusion of Law

That plaintiff is entitled to have and recover judgment against the defendant in the sum of

Fifteen Hundred (\$1500.00) Dollars, together with its costs and disbursements herein to be taxed.

Done in Open Court this 15th day of August, 1949.

/s/ JOHN C. BOWEN,  
Judge.

Presented by:

/s/ HAROLD A. SEERING,  
Attorney for Plaintiff.

[Endorsed]: Filed August 15, 1949.

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In the District Court of the United States for the  
Western District of Washington, Northern  
Division

No. 1787

FOSTER TRANSFER COMPANY, a Washington  
Corporation,

Plaintiff,

vs.

THE UNITED STATES,

Defendant.

### JUDGMENT

This matter having come on this day before the undersigned Judge of the above-entitled court, plaintiff appearing by Harold A. Seering, its attorney; defendant appearing by J. Charles Dennis and Vaughn E. Evans, its attorneys; and the action having heretofore been heard and tried before the undersigned on the 2nd and 3rd days of August,

1949, witnesses having been sworn and testimony adduced and thereafter on the 5th day of August, 1949, the court having heard the argument of counsel and having orally announced its decision, and the court having entered its Findings of Fact and Conclusion of Law, Now, Therefore,

It Is Ordered, Adjudged and Decreed that plaintiff have and recover judgment against the defendant in the sum of Fifteen Hundred (\$1500.00) Dollars, together with its costs and disbursements in the sum of Fifty-One and 80/100 Dollars (\$51.80).

Done in Open Court this 15th day of August, 1949.

/s/ JOHN C. BOWEN,  
Judge.

Presented by:

/s/ HAROLD A. SEERING,  
Attorney for Plaintiff.

[Endorsed]: Filed Aug. 15, 1949.

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[Title of District Court and Cause.]

### NOTICE OF APPEAL

To: Foster Transfer Company, a Washington Corporation, plaintiff herein, and to Maxwell, Seering & Jones, its attorneys:

Notice is hereby given that the United States of America, defendant above named, hereby appeals to the United States Court of Appeals for the Ninth

Circuit from the Judgment entered in the above court on the 15th day of August, 1949.

/s/ J. CHARLES DENNIS,

U. S. Attorney,

/s/ VAUGHN E. EVANS,

Assistant U. S. Attorney.

[Endorsed]: Filed October 10, 1949.

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[Title of District Court and Cause.]

### STATEMENT OF POINTS RELIED UPON

Appellant, United States of America, proposes on its appeal to the United States Court of Appeals for the Ninth Circuit to rely upon the following points as error:

1. The court erred in finding, concluding and adjudging that the terms of the written contract between the appellant and the appellee required the appellant to give the appellee notice of cancellation of the contract a reasonable time before the effective date of such cancellation.

2. The court erred in finding, concluding and adjudging that the period of time between the giving of the notice of cancellation of the contract by the appellant and the effective date of the cancellation was unreasonable.

3. The court erred in questioning witnesses on issues not raised by the pleadings or evidence in-

troduced by the parties and granting the appellee damages based on such testimony so adduced.

4. The court erred in finding, concluding and adjudging that the appellee recover damages against the appellant for items not mentioned in the pleadings nor raised by evidence offered by the parties.

5. The weight of the evidence is contrary to the findings of fact.

6. The conclusions of law are contrary to the law governing the subject matter of the controversy.

7. The court erred in refusing to admit appellant's Exhibit A-8 in evidence.

8. The court erred in holding the appellee was entitled to judgment against the appellant.

9. The court erred in not finding in favor of the appellant.

/s/ J. CHARLES DENNIS,  
United States Attorney.

/s/ VAUGHN E. EVANS,  
Assistant U. S. Attorney.

[Endorsed]:~ Filed November 15, 1949.

[Title of District Court and Cause.]

DESIGNATION OF RECORD

Comes now the appellant, United States of America, and designates the following as the record to be prepared on appeal in the above-entitled cause.

1. The entire transcript of proceedings.
2. All pleadings.
3. Exhibits 5, 6, A-1, A-2, A-6, A-7, A-8, A-10, A-11, A-12, and A-13.

/s/ J. CHARLES DENNIS,  
United States Attorney.

/s/ VAUGHN E. EVANS,  
Assistant United States Attorney, Attorneys for  
Appellant.

Receipt of copy acknowledged.

[Endorsed]: Filed November 15, 1949.



In the United States District Court for the Western  
District of Washington, Northern Division  
No. 1787

FOSTER TRANSFER COMPANY, a Washington  
Corporation,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

Be It Remembered, that on the 2nd day of August, 1949, at the hour of 10:00 a.m., the above entitled and numbered cause came on for trial before the Honorable John C. Bowen, District Judge, at United States Federal Courthouse, in the City of Seattle, County of King, State of Washington;

The plaintiff appearing by Harold A. Seering, Esq. (of Maxwell, Seering & Jones), its attorney and counsel;

The defendant appearing by Vaughn Evans, Esq., its attorney and counsel;

Both sides having announced they were ready for trial, the following proceedings were had and testimony given, to wit:

The Court: In the case on trial, Foster Transfer Company versus United States of America, Cause Number 1787, the Court will now hear the opening statement of counsel for the plaintiff as to what the plaintiff thinks the proof will be in this case.



(Opening statement by counsel for plaintiff.)

The Court: I will hear the defendant's opening statement now or later, as you may elect.

Mr. Evans: I believe we prefer to reserve our opening statement. I do have a short memorandum of authorities which may be helpful to the Court.

The Court: That will be welcome.

Mr. Evans: I have given opposing counsel a copy of it.

The Court: Plaintiff may call its first witness.

Mr. Evans: If Your Honor please, before calling a witness, Counsel and I have agreed, I think, on practically all of the exhibits in the case and at this time we have agreed that—will you identify it, Counsel?

Mr. Seering: Yes. This is a certified copy of the contract from the General Accounting Office which bears the protestation and proper seal of that office.

This is a black on white photostat of the original [4\*] contract together with the performance bond and acceptance of the bid and notice of termination and the two or three amendments to the contract. This is a complete Accounting Office file, which I believe is proper for admission in evidence without further identification.

The Court: Did you say it was a black photostat?

Mr. Seering: It is a black on white—positive rather than negative. I took special pains to procure that type.

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\* Page numbering appearing at bottom of page of original certified Transcript of Record.

The Court: I wish to thank counsel for his extra trouble in that connection and to commend him for it, and I hope that you will at every opportunity let the government agencies in Washington who are assisting you in providing documents know of the desirability of this and the Court's wishes about it.

Mr. Evans: We do that every time we have an opportunity, Your Honor.

Mr. Seering: It is agreed that this may be received.

The Court: That will be marked Plaintiff's Exhibit 1. It is now admitted.

(The document referred to was marked Plaintiff's Exhibit No. 1 and received in evidence.) [5]

Mr. Seering: I will call Mr. L. H. Doolittle.

### L. H. DOOLITTLE

called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

#### Direct Examination

By Mr. Seering:

Q. Will you state your name, please?

A. L. H. Doolittle.

Q. And where do you reside?

A. Seattle, Washington.

Q. And what is your occupation?

A. I am in the transportation business.

Q. Presently where are you engaged in furthering your occupation?

(Testimony of L. H. Doolittle.)

A. Alaska and in Washington.

The Court: Washington City or Washington State?

The Witness: Washington State.

Q. Were you engaged in the transportation trucking business in 1945? A. Yes, I was.

Q. Were you connected with the Foster Transfer Company? A. Yes.

Q. I will ask you whether the Foster Transfer Company is a corporation? [6]

A. Yes, it is.

Q. And has it paid all of its license fees due the State of Washington? A. Yes, it has.

Q. Its principal place of business is in Seattle?

A. That's right.

Q. Were you an officer of that corporation?

A. Yes.

Q. What was your office? A. President.

Q. Now, did the Foster Transfer Company enter into a contract with the United States Government in 1945? A. Yes, it did.

Q. Do you recall the date of that contract?

A. It was in June—about June 26th or 28th, 1945. Effective July 1st.

Q. Well, the contract is in evidence and speaks for it. The services called for by that contract were of what type?

A. Well, they were of average quality.

Q. No; I mean what were the nature of the services? What were you supposed to do?

(Testimony of L. H. Doolittle.)

A. Well, under the contract it called for drayage of general merchandise, moving of office equipment, packing and crating of household goods, picking up of household [7] goods, and packing the household goods, and also furnishing labor at the Government's call.

Q. And for whom——

The Court: Speak clearly and distinctly.

Q. For whom were these services to be performed?      A. For the government agencies.

Q. Can you tell us how many government agencies there were that were procuring services under this contract?

A. No, I can not, because every day we would have another one, or one that we hadn't had before.

Q. Can you give us some approximation of your principal ones?

A. Well, of the total that we did business with, there were 39—over the period of time that we had the contract, but we never did work for all of those every day.

Q. Who were the largest users of your services under the contract?

A. The largest user was the Port of Embarkation and the Fort Lawton Rail Transportation Office.

Q. And did you furnish a bond as required by the contract?      A. Yes, we did.

Q. And the amount of that bond was what?

A. \$10,000.

Q. And did you undertake performance under the contract? [8]           A. Yes.

Q. How long did you perform under the contract?

A. Approximately seven months.

The Court: May I interrupt you a moment? For my convenience, state the name of that Fort Lawton concern. Fort Lawton what?

The Witness: Fort Lawton Rail Transportation Office. It is a Division of the army.

The Court: You may continue.

Q. (By Mr. Seering): I will ask you this: Was your contract canceled?           A. Yes, it was.

Q. When did that occur?

A. It occurred on the 26th of February, I believe, 1946.

Q. And in what manner was that cancelation made?           A. By registered letter.

Mr. Seering: I ask to have this marked.

(Letter marked Plaintiff's Exhibit No. 2 for identification.)

Q. (By Mr. Seering): Referring to Plaintiff's Exhibit 2 for identification which has now been handed to you, will you tell us what that is?

A. That was a letter which was received canceling the contract.

Mr. Evans: I am willing to stipulate that it is a government letter terminating the contract.

Mr. Seering: It is offered for that purpose.

The Court: It is admitted. And will the witness spell the name of the man who signed that letter?

(Testimony of L. H. Doolittle.)

The Witness: I-h-l-a-n-f-e-l-d-t.

The Court: I don't get that.

The Witness: I-h-l-a-n-f-e-l-d-t.

The Court: What are the initials?

The Witness: William B.

(Letter marked Plaintiff's Exhibit No. 2 for identification received in evidence.)

The Court: You may continue.

Q. (By Mr. Seering): Now, as I understand it, there were no reasons stated in the notice of cancelation? A. That is right.

Q. For the cancelation? A. That is right.

Q. Had you had any conversations immediately preceding that notice? A. No, we had not.

Q. Relating to grounds for cancelation?

A. No.

Q. Had you been given any notice of any kind that would lead you to believe that your services were in question—the quality of your services were in question? [10] A. No, we had not.

Q. Now, what can you tell us as to the quality of the services which were rendered by the Foster Transfer Company during the seven months during which it performed under the contract?

A. Well, for that period of time I would say the services rendered were very good.

Q. Were there complaints during that period of time?

A. Yes; we received complaints from the Treasury Department.



(Testimony of L. H. Doolittle.)

Q. What were the nature of those?

A. Oh, that—one complaint—the main complaint that we had was that we sent open equipment where they said we should have sent closed equipment.

Q. What were the facts in regard to that?

A. Well, at the time I couldn't say that we should have sent closed equipment and I can't say that we should have now because I didn't know then and I don't know now.

Q. Without going into detail of numerous instances, what would you say as to the quality of your performance as compared to the general performance of trucking companies under similar contracts?

A. Well, from what we found out, why, we did a pretty good job. From the investigation we made at the time, the [11] people we talked to, the government agencies we were doing work for seemed to think we were doing pretty good.

Mr. Evans: Well, I am going to object to the answer as given here. I did not realize at the time the question was asked that it was going to be of a hearsay nature, that is, that the answer would be, and I am going to ask that the answer be stricken unless he can state upon what basis he makes this statement.

The Court: Probably the Court should sustain the objection upon a ground not stated. It seems to me that the real reason it is objectionable, the

(Testimony of L. H. Doolittle.)

witness is stating his own conclusion about something that may involve facts not sufficient to support the conclusion.

I think what he should say is what he was told and whether the person acting for the Government had authority to act for the Government. There is no reason why he cannot say what was said regarding the quality of his services, if the person saying it was authorized to deal in that capacity for the Government.

The objection is sustained.

Q. (By Mr. Seering): I will ask you if, after the cancellation of your contract, you consulted with the representatives of a number of the government agencies as to the [12] quality of your services? You can answer that yes or no.

A. Yes, we did.

Q. Now, were those people who were authorized to represent their particular agencies in matters of transportation with regard to the use of the services of your company? A. Yes, they were.

Q. And what was the information you obtained from those people?

Mr. Evans: I am going to object to this. If it is desired to have the reports of what those people say, I believe they should be subpoenaed so that they can be cross-examined. I do not believe it is competent testimony for this witness to testify as to what somebody told him.

The Court: You will have to state who it was



(Testimony of L. H. Doolittle.)

and what their relationship to the subject matter was. He will have to state who it was and what their relationship to the subject matter under discussion was.

Q. (By Mr. Seering): Can you tell us who these people were that you talked to?

A. Well, we talked to a captain down at the Port.

The Court: Captain who?

The Witness: Galt.

Q. (By Mr. Seering): And what was his job?

A. He was in charge of packing and crating household goods for the Port. And Captain——

Q. Wait a minute. What did he say?

Mr. Evans: I am going to object to what he said as being hearsay. It is strictly hearsay for this witness to testify as to what somebody else told him.

The Court: Ascertain from this witness, if he knows, whether this captain had anything to do with the operations of the contract.

Mr. Seering: Well, I thought we had covered that. I will ask the question.

Q. (By Mr. Seering): Was Captain Galt, in the performance of his duties, familiar with your performance under this contract in question?

A. Yes, he was; very definitely.

The Court: You might ask him how he became familiar.

Q. (By Mr. Seering): Will you tell us the extent of his connection with your work?

A. Well, Captain Galt had direct charge of all

(Testimony of L. H. Doolittle.)

of the household goods which the Seattle Port of Embarkation handled for army personnel. It was he who gave us orders to go out and pick up all of these household goods and what to do with them after we picked them up. He was the man who told us where to ship the household [14] goods to when they were packed and crated; so he had direct supervision over the operation of all of the household goods.

Q. What did Captain Galt state as to the quality and nature of your services?

Mr. Evans: I am going to object again on the ground that whatever Captain Galt said is hearsay and should not be considered by this Court.

The Court: It is overruled. He may answer now.

A. Captain Galt told me after this contract was canceled that we had done a good job for the Port and that he would talk to Captain Hogan of the Port procurement office and see if the Port——

The Court: I understood it was something he said before the cancellation. I am not so convinced of the admissibility of this evidence over objection. I thought you were going to inquire as to what took place before the cancellation in the ordinary course of business that was done.

Mr. Seering: Your Honor, I do not see the distinction. Here are agents of the government with whom we are dealing who have stated, whether it

(Testimony of L. H. Doolittle.)

is before or after, that the quality of the services rendered under the contract were satisfactory.

The Court: Well, it is the same thing as if the government were trying to prove something that you said after the lawsuit commenced. I believe that the objection should be sustained.

If you wish to inquire into what Captain Galt said before the contract was terminated or canceled, the ruling will be different. But as to what was said after the dispute arose, I think the objection will be sustained.

Mr. Seering: Exception.

The Court: Allowed.

Q. (By Mr. Seering): Did you have any conversations with Captain Galt during the life of your contract and before cancelation?

A. Many conversations—every day.

Q. Well, having in mind the questions asked you preliminarily, will you tell us what those conversations were, and relating particularly to the nature and the quality of your services under the contract?

A. Well, he thought we were doing a good job: If he hadn't, he would have given it to somebody else, because it was at his discretion to do so.

Q. Now, were there any other representatives of agencies of the government with whom you talked—and having in mind the ruling of the Court that your conversation must relate to a time during the life of the contract [16] and before its cancelation.

Mr. Evans: May I interrupt? It may be under-

(Testimony of L. H. Doolittle.)

stood that my objection goes to all that Captain Galt said?

The Court: No. The Court wants to know who it was and what their relationship to the work was.

Mr. Evans: Just for the purpose of the record, Your Honor, I would like—my objection goes to all that Captain Galt said.

The Court: The reason I do not approve of that, I have concern that there might be a situation where the witness would not say preliminarily what connection a man who made the statement had with the doing of the work and until that is brought out I do not know whether the objection applies. I would rather have the objection made each time.

Mr. Evans: Very well, Your Honor.

Q. (By Mr. Seering): Just answer that question yes or no. The question was: Were there any other representatives with whom you talked?

A. Yes.

Q. Name one.

A. John Conley, War Assets.

Q. And what was his position with the War Assets Administration? [17]

A. He had charge of moving all their material.

Q. And in the performance of his duties did he become familiar with your work?

A. Yes, he did.

Q. What was his relationship to your performance of your duties under your contract?

A. He was the man we did the work for. He called us.

(Testimony of L. H. Doolittle.)

Q. All right. Will you state what he told you with regard to the quality and nature of your services?

Mr. Evans: I am going to object to that question as being hearsay.

The Court: Overruled.

A. On one large move we made for the War Assets from the Wilson Business College building—the Textile Tower—he said we did a very, very, good job.

Q. Were there any other representatives of government agencies with whom you talked?

A. Well, I talked to lots of them, but I can't—Mel Mullet of the United States Army Engineers.

Q. What was his position?

A. He has charge of transportation.

The Court: It might be helpful if someone would spell that name for the record. I didn't clearly understand what the witness said.

The Witness: Melvin Mullet, M-u-l-l-e-t. [18]

The Court: What was he?

The Witness: He was with the U. S. Army Engineers.

The Court: You may continue.

Q. (By Mr. Seering): And state again what his position was.

A. He had charge of transportation for the Army Engineers.

Q. And in the performance of his duties would he be familiar with the quality of the services which you performed under your contract?



(Testimony of L. H. Doolittle.)

A. Yes, he would.

Q. And what was your conversation with him?

Mr. Evans: I am going to object to anything he might have said as being hearsay.

The Court: Overruled.

A. Well, directly I never had any conversation with Mr. Mullet over the quality of our work. We have continued to do work for Mr. Mullet since.

Q. The quality of your work never came into question? A. No, it never did.

Q. What can you say with regard to the volume of work which you had been performing for the Army Engineers?

A. Well, the Army Engineers, in dollars and cents, did the largest amount of hauling of any government agency.

Q. Do you recall any other representatives of government agencies with whom you discussed this matter during your contract? [19]

A. Well, I can't remember them, Mr. Seering, but you have a list there.

Q. Well, I was going to ask you, if you will refresh your recollection by referring to the document which I will ask the clerk to hand you——

The Clerk: Do you want it marked?

Mr. Seering: I do not want to introduce it as an exhibit, Your Honor. I simply want the witness to refresh his recollection from it.

(Document in question presented to the witness.)

(Testimony of L. H. Doolittle.)

Q. (By Mr. Seering): Now, having in mind, Mr. Doolittle, before you answer the question, that that document is dated at a time subsequent to the cancelation of the contract, and in line with the ruling of the Court, I want you to simply state whether during the life of the contract you had any conversations with any of the people named on that document who signed it.

A. I can't answer that question because I don't remember.

Q. Is that document dated?

A. Yes, it is.

Q. What is the date?

A. March 1st, 1946.

Mr. Seering: If Your Honor please, I have changed my mind with regard to offering it as an exhibit. [20] I had in mind the ruling of the Court and I think this, perhaps, comes within the Court's prohibition. However, for the record, I would like to have it identified and offer it as an exhibit.

(Document entitled Appeal of Foster Transfer Company, Inc., Contractor under Contract T11rp-156 marked Plaintiff's Exhibit No. 3 for identification.)

Mr. Seering: I understand Counsel has no objection.

The Court: To Plaintiff's Exhibit 3?

Mr. Evans: I have no objection, Your Honor.

The Court: It will be admitted.



(Testimony of L. H. Doolittle.)

(The document heretofore marked Plaintiff's Exhibit No. 3 was received in evidence.)

Mr. Evans: I might state to the Court that that document is also a part of the file of the Secretary of the Treasury who reviewed this dispute—or this cancelation and confirmed the local office's action here, which will be offered later—well, at any time it is agreeable to counsel. But that will be in evidence later, anyhow.

Mr. Seering: I have no further questions of the witness on that. [21]

Q. (By Mr. Seering): I will ask you: Referring to the exhibit with the signatures attached to the notice of appeal, what is that?

A. This is a list of the people for whom we did work and who Mr. Hallam contacted. And he asked them if our services had been all right, and they said yes.

Q. Who is Mr. Hallam?

A. Mr. Hallam was the manager who had charge of the work for me under this contract.

Q. You, yourself, did not contact those individuals whose signatures appear there, then?

A. No, I did not.

Mr. Seering: That is all.

I understand the exhibit is received without objection.

The Court: It is admitted.

Q. (By Mr. Seering): Now, you have alleged in your complaint that your loss by reason of the

(Testimony of L. H. Doolittle.)

cancellation of the contract for the unexpired five months term was \$5,000. How do you arrive at that figure?

A. Well, profit on this contract ran approximately a thousand dollars a month previous to this time. It had run over—a little bit over a thousand dollars a month, and if work fell off, or something, it probably would go down to about a thousand dollars a month. [22] That is the reason we figured a thousand dollars a month.

Q. Did you at my request yesterday go through your records to determine the gross volume of work done under this contract? A. Yes, I did.

Q. And can you tell us what that figure was, or do you wish to refer to the figures which you took from your record?

A. In order to be correct, I would have to refer to the figures.

Q. I will hand you those to refresh your recollection.

The Court: While you are doing that, I wish the reporter would read the last three questions and answers after the Court's ruling on Exhibit 3.

(The questions and answers referred to were repeated by the reporter.)

The Court: You may continue.

Q. (By Mr. Seering): I have handed you an adding machine tape for the purpose of refreshing your recollection. Will you now tell me what your

(Testimony of L. H. Doolittle.)

gross volume was under this contract for the seven months' period that was in effect?

A. \$52,179.02. [23]

Mr. Evans: Will you read that again, please?

The Witness: \$52,179.02.

Q. (By Mr. Seering): And can you tell us what your gross profit on this particular trucking operation was?

A. The gross profit on this particular operation was \$13,421.

Q. Well, how do you arrive at that figure?

A. That was after our payroll and everything was deducted on this operation. All expenses were deducted. In other words, a little better than 20 percent.

Mr. Seering: You may examine.

#### Cross-Examination

By Mr. Evans:

Q. Now, were those figures which you just read taken from your books? A. Yes.

Mr. Seering: Excuse me, Counsel. I have a further question.

#### Direct Examination—(Continued)

By Mr. Seering:

Q. You have denied paragraph 6 of the Complaint. I have not asked any questions on that. You allege in paragraph 6 that the plaintiff is the sole owner of the claim herein sued upon, and that no assignment of such claim or any interest therein has been made to any [24] person and that no other

(Testimony of L. H. Doolittle.)

action has been had on said claim in Congress or by any of the defendants.           A. Yes, sir.

Q. And is that true?           A. Yes.

Mr. Seering: You may examine.

Cross-Examination

By Mr. Evans:

Q. Now, these figures that you just read, you took those from your books and records?

A. Yes, we did.

Q. Are those books and records available here in Court?           A. Yes, they are.

Q. Do you have them all here?           A. Yes.

Q. Can you tell us how much of that \$52,000 was made during the calendar year of 1945?

A. I could. I can't from this, but I could from the books.

Q. How long would it take you to do that?

A. Probably about an hour.

Q. Now, as I understand, the Foster Transfer Company had been in business for some time; is that correct?           A. That is right.

Q. How long had the Foster Transfer Company been in business? [25]           A. Since 1934.

Q. And it did other business besides its contract, I presume?           A. That is right.

Q. Now, what kind of a six months did you have prior to July 1st, 1945, that is, from January 1st to July 1st, 1945? Were you doing any business during that period?           A. Yes, we were.

(Testimony of L. H. Doolittle.)

Q. That is, the Foster Transfer Company was doing some business? A. Yes?

Q. How much business do you estimate you did in the six months prior to the contract. Have you any idea?

A. I couldn't tell you that at all. I haven't any idea.

Q. Now, this contract you entered into with the government about which this lawsuit is about, you set out in there the rates, the set rates that you would charge for your services, is that correct?

A. That is right.

Q. And prior to submitting your bid you determined how much those rates would be, is that correct? A. Yes.

Q. Now, can you tell me whether or not the rates which you set out in that contract, your bid, which was ultimately [26] accepted, how those rates compare with the charges which you might charge other people? A. On our State tariff.

Q. Well, if I wanted to have some hauling done independent of any governmental agency, how would the rates compare that you were charging the government as with anybody else? Were they about equal, greater, or less?

A. Well, they were, on the whole, less.

Q. They were less? A. Yes.

Q. In other words, you were charging the government less than you were charging other people?

A. Yes.

(Testimony of L. H. Doolittle.)

Q. Now, how many employees did you have working for you on July 1st, 1945; do you recall that?

A. Foster Transfer at that time had five.

Q. Five employees? A. Five employees.

Q. The Foster Transfer Company?

A. Yes.

Q. That was on July 1st, 1945, previous to the time of this contract? A. Yes.

Q. Now, was Mr. Hallam, Mr. Sydney Hallam working for you at that time? [27]

A. Yes, he was.

Q. And in what capacity was he working?

A. Well, as an outside man.

Q. Now, what do you mean by outside man? I wish you would just state generally what his duties were—what was expected of him.

A. Well, he could contact people and see that the trucks got to their place on time and see that everything went along smoothly. Anything that he could do to help the thing along, why he would.

Q. Well, now, isn't it a fact that you hired Mr. Hallam at about this time specifically to handle the work of the Foster Transfer Company under this government contract?

A. No, that is not right.

Q. Isn't it a fact that Mr. Hallam was working for the Treasury Department until a very short time prior to the time you got this contract?

A. That is right.



(Testimony of L. H. Doolittle.)

Q. And isn't it a fact that you considered that he was competent and experienced in the type of government paper work which would come under this contract? A. That is right.

Q. And isn't it a fact that that is what you told him—at least was one of the reasons you were hiring him for this job? [28]

A. Well, he wasn't hired specifically for any one job. He was hired to do the work, yes; but anything else that came along, why, he was also to do that, too, if he could.

Q. Now, were any of Mr. Hallam's duties in the nature of supervising the movement of whatever it was that needed to be moved under this contract?

A. Yes; that is right.

Q. And will you state whether or not he was more or less in charge of the dispatching of the trucks?

A. He was in direct charge of dispatching the trucks—all trucks.

Q. I will ask you whether or not it was his job to supervise all of the movements under this contract? A. No, it was not.

Q. How much of it?

A. All that he could handle.

Q. And who was to supervise the rest of it?

A. I had two or three other men.

Q. How many other men?

A. I had three that did direct supervision besides myself.

Q. Three other men. That makes Mr. Hallam



(Testimony of L. H. Doolittle.)

and three other men—that is four. And I presume you were the fifth employee, is that correct?

A. That is right. [29]

Q. In other words, the Foster Transfer Company just had the five of you; you and Mr. Hallam and three other men whom you considered supervisors?

A. That is right.

Q. At the time you entered into this contract?

A. No, no; you are not right there, Mr. Evans. You see, there are other companies involved in this operation, too, besides just Foster Transfer.

Q. How is that?

A. There are other companies involved in this besides the Foster Transfer Company.

Q. Are you stating now that the government entered into some other contract with some other organization?

A. No! No; but I also own Doolittle Trucking in which I had a lot of employees.

Q. Now, wait a minute. Was the government doing business with the Doolittle Trucking Company or doing business with Foster Transfer Company?

A. Foster Transfer Company. But you are trying to find out the number of employees that Foster Transfer had.

Q. That is all I want, just those actually on the payroll of Foster Transfer. We are not interested in any other trucking company.

A. There were five.

Q. Five? [30]                      A. Yes.

(Testimony of L. H. Doolittle.)

Q. Now, at the time you entered into this contract, isn't it a fact that Mr. Street here, and Mr. Clark, came down to see you at your place of business before your bid was accepted?

A. I remember Mr. Clark. I can't say I—whether Mr. Street was there or not.

Q. Isn't it a fact they came down and talked to you about how much equipment you had and whether or not you would be able to do the job?

A. That is right.

Q. And isn't it a fact that at that time you submitted to them a typewritten list of your employees?—and your equipment?

A. That is right.

Q. Now, how many pieces of equipment did the Foster Transfer Company own at that time?

A. Two.

Q. Two?           A. Two pieces directly.

Q. What two pieces?

A. A GMC truck and a Ford truck.

Q. A GMC 1939 van ton-and-a-half?

A. It could have been, yes.

Q. Was it a van or was it a flat bed truck? [31]

A. Van.

Q. Van. Now, what was the other piece?

A. It was also a van.

Q. Another van?           A. Yes.

Q. What make?           A. Ford.

Q. That was a Ford?           A. That was a Ford.

Q. Do you recall the weight that it would carry?

(Testimony of L. H. Doolittle.)

—the weight it was listed as being supposed to carry?

A. Oh, about—you mean net carrying load?

The Court: You mean the same thing as you would describe the other van, as being a one-and-one-half ton?

The Witness: Well, that would be a one-and-one half, also, if you rate it that way. We don't rate them that way.

The Court: How do you rate it?

The Witness: As to the load they carry.

The Court: Then in that term or denomination describe the capacity of these two trucks.

The Witness: It would be 6 ton.

Q. (By Mr. Evans): You could load six tons of freight on them? A. Yes. [32]

Q. Now, I will ask you whether or not you are not required to submit a sworn statement to the Department of Transportation, State of Washington, for each year? A. We are.

Q. Do you have a copy of the one which you submitted for 1945 here with you as a part of your records? A. I don't believe we do.

The Court: We will take about a 10 minute recess at this time.

(Whereupon, a short recess was taken.)

(All parties present as before.)

The Court: You may proceed. Resume the stand.

Q. (By Mr. Evans): Now, Mr. Doolittle, I believe at the time the recess was called I was asking

(Testimony of L. H. Doolittle.)

you whether or not you were required to submit an annual report to the Department of Transportation, State of Washington, each year for the Foster Transfer Company.      A. That is right; we are.

Q. And as I understand, you do not have your retained copy here?      A. No, I don't.

Mr. Evans: I would like to have these two marked for identification separately, please. [33]

(Annual Report of Foster Transfer Company to Department of Transportation of Washington for year ended December 31, 1946, marked Defendant's Exhibit A-1 for identification.)

(Annual Report of Foster Transfer Company to Department of Transportation of Washington for year ended December 31, 1945, marked Defendant's Exhibit A-2 for identification.)

Mr. Evans: Your Honor, both of these exhibits are records of the State of Washington. They are certified copies attested to by the proper officer as authenticated by the Secretary of State and under the statutes pertaining to admission of evidence they are subject to being admitted in this Court as such records, and at this time I would like to offer them.

Mr. Seering: He hasn't asked the witness to identify them.

Mr. Evans: No. I don't know whether this witness can identify them, but they are certified copies of records of the State of Washington, attested by the proper officer and authenticated—authentication

(Testimony of L. H. Doolittle.)

is attached to each one by the Secretary of State stating that the person who made the attestation, certifying that it is a certified copy, is a proper officer to make such attestation. I believe it is Section 1938, [34] Title 28 that covers the requirements for admissibility of state records in the Federal courts.

The Court: Counsel for the plaintiff made a statement. It seems to me that your response did not meet the situation. He is not objecting to lack of authenticity but to a showing of materiality, as I understand it.

Mr. Seering: That is correct.

Mr. Evans: Very well.

Q. (By Mr. Evans): Now, Mr. Doolittle, will you look at either one of those exhibits and tell me for what year the particular numbered exhibit is so that I can get it straight? A. 1946.

Q. And what is the number the clerk has put on it? A. A-1.

Q. A-1. Now, will you look at that and state whether or not you know what it is?

A. I know what the report is.

Q. And will you state what the report is?

A. This is an annual report of the Department of Transportation issued by the carriers—motor carriers, State of Washington.

Q. And I will ask you whether or not it is the report of the Foster Transfer Company? [35]

A. Yes, it is.

Q. And after looking at it, will you state whether

(Testimony of L. H. Doolittle.)

or not you can recognize that that is a certified copy of the report which was submitted by you?

A. I imagine it would be. They have the correct copy down in Olympia.

Q. I will ask you whether or not you submitted such a report for 1945?

A. I personally, probably, didn't, but my accountant did.

Q. I will ask you whether or not you did not sign the copy that was submitted?

A. No, I did not.

The Court: Look at the purported signature.

The Witness: That is right; it is signed by my dad.

The Court: He said it is signed by his dad. Did he have authority to sign it and make that report for the company?

The Witness: Yes, he could sign it.

The Court: Did you approve his so doing?

The Witness: Yes.

The Court: Proceed.

Mr. Evans: I will offer Defendant's Exhibit A-1.

Mr. Seering: No objection. [36]

The Court: Admitted.

(The document heretofore marked Defendant's Exhibit A-1 was received in evidence.)

Q. (By Mr. Evans): And will you look at what has been marked for identification as A-2; and I will ask you whether or not that is a report for 1945, of the same nature as Exhibit A-1? A. It is.



(Testimony of L. H. Doolittle.)

The Court: What year was A-1 the report of?

The Witness: 1946.

Q. (By Mr. Evans): I will ask you whether or not that is signed by a person authorized to represent the Foster Transfer Company?

A. Yes, it was.

Mr. Evans: We will offer Defendant's Exhibit A-2.

Mr. Seering: No objection.

The Court: Admitted.

(The report heretofore marked Defendant's Exhibit A-2 for identification was received in evidence.)

Q. (By Mr. Evans): Now, will you please refer to Defendant's Exhibit A-2? Now, according to that report what was the gross business done by the Foster Transfer [37] Company during the entire year of 1945?

A. According to this, the total operating revenue was \$18,460.14—no! I beg your pardon; I beg your pardon—\$28,598.19.

Q. Now that sum, twenty-eight thousand five hundred and some odd dollars, represents the revenue received by the Foster Transfer Company during the entire year of 1945? A. That is right.

Q. Not only the revenue received from the government under this contract but also all other revenue received, is that correct?

A. From this report, that is right.



(Testimony of L. H. Doolittle.)

Q. Now, what were your operating expenses during that year, according to that report?

A. The operating expenses were \$29,041.38.

Q. Now, according to that report did you make any money or lose any money?

A. According to this report, I lost \$443.19.

Q. That is, for the entire year?

A. That is right.

Q. For all your operations?

A. That is right.

The Court: Mr. Reporter, will you repeat the total expenses? [38]

(The reporter then repeated the total expenses.)

The Court: You may proceed.

Q. (By Mr. Evans): Now, according to that report which you made to the State officials, the Foster Transfer Company, how much equipment did you have during that year?

A. On this there was one truck.

Q. One truck. What year and model?

A. 1939. GMC van.

Q. And what is the rated capacity according to that report? A. One-and-one-half ton.

Q. And what is the value of that truck at the end of the year according to that report?

A. \$552.73.

Q. Now, please refer to Defendant's Exhibit A-1. I believe that is the report for 1946; is that correct? A. That is right.

(Testimony of L. H. Doolittle.)

Q. Now, what was the revenue which was received by the Foster Transfer Company for the entire year of 1946 according to that report?

A. \$19,016.82.

Q. Now, what were the expenses of the Foster Transfer Company during 1946, according to that report?

A. \$18,300.40. [39]

Q. Now, according to that report, did you make money or lose money that year?

A. Made money.

Q. How much? A. \$716.42.

The Court: Pardon?

The Witness: \$716.42.

Q. Now, your contract was canceled, as I understand, effective the last day of February, 1946, is that correct?

A. That is right.

Q. So your contract at the time of the cancellation had actually been in existence since July 1st, 1945?

A. That's right.

Q. Now, that would make eight months, wouldn't it?—let's see—it would be through the months of July, August, September, October, November, December, 1945; that's six months; and then it was in operation through the last day of February, 1946?

A. That is right.

Q. That is an additional two months; so your contract was actually in operation for eight months?

A. That's right.

Q. And under the contract there was four months remaining rather than five as you previously testi-

(Testimony of L. H. Doolittle.)

fied, isn't that correct? It would be through the months of March, [40] April, May and June that the contract had yet to run? A. That is right.

Q. So you were mistaken when you testified formerly about it being five months?

A. That's right.

Q. Now, during 1946, you had other business besides the business which you did with the government, didn't you? During those first two months, that is, you had revenues other than from the government? A. I should have.

Q. Now, as I understand, you stated that you charged the government less than you charged other people? A. That's right.

Q. Then how can you justify your statement that you were making about a thousand dollars a month off of the government when during 1945, during the whole year, you lost \$443 and yet you were charging the government less than you charged other firms?

A. Well, that total revenue there, and that loss, is the money that was collected, and that money run over into '47. Checks are still dribbling in on it.

Q. You mean you still haven't been paid for all the work that is due you under this contract?

A. That is right.

Q. Well, by the end of 1946 how much was still outstanding [41] that was due you?

A. That I can't tell you, but I just looked there now and I see where we got quite a bit in '47.

(Testimony of L. H. Doolittle.)

Q. What do you mean by "you got quite a bit?"

A. Well, about \$400.

Q. \$400. What do you consider to be your percentage of profit in the business?

A. Our gross profit—our gross net profit——

Q. Well, what do you mean? Do you mean gross profit or net profit?

A. Gross profit.

Q. Gross profit.

A. It should be 20 per cent.

Q. 20 percent. Now, what would be your net profit?

A. Our net profit runs in the neighborhood—I can't tell you that, but it should run between 10 and 12 percent.

Q. Well, how much did it run?

A. On this contract? It ran better than 12 percent.

Q. Well, now, I don't understand how you can say that the profit on this contract ran better than 12 percent when on other business it only runs about 10 to 12 percent, when you are charging the government less than you charge other people.

A. We have a larger volume. We kept the men busy all the time. On our other work you have times when you are [42] not busy and your overhead still goes on.

Q. Well, isn't it a fact that this government business was sporadic?

A. No; after the first month it was very good.

Q. Well, wasn't it sporadic, that is, you didn't

(Testimony of L. H. Doolittle.)

know how much from one day to the next you would be called upon to do, did you?

A. Not exactly. I can't answer that yes, Mr. Evans, because after the first month we had gone around enough government agencies and we got enough work to keep busy.

Q. Well, there was nothing said about how much work you were going to get, was there?

A. Well, we had—at times we were booked ahead on jobs as much as two and three weeks. I can't answer that yes.

Q. Well, does that mean you were delaying the operations of what these government agencies wanted for two and three weeks until you would get around to handle it?

A. No. People would call up and they would tell you that at a certain day they would want to move. They would want to move a desk or would have a carload of furniture coming from the east and they would tell you the day it would be here; so you could figure out that way. Actually we had enough household goods so we didn't have to—the Port would tell us, or the Rail Transportation Officer at Fort Lawton would tell us, maybe a [43] month ahead of time, when certain men were going to be discharged from the army and when they would want their household goods packed and crated; and we could schedule it so we could work—just keep our men working. So actually it was a good operation.

Q. Now, just what capacity does your father



(Testimony of L. H. Doolittle.)

have down at this plant? You mentioned that your father signed some of those reports. Is he an officer of this corporation? A. He was.

Q. In what capacity did he work.

A. He was secretary-treasurer.

Q. Well, now, was he one of these five employees that you speak of? A. Yes, he was.

Q. How old a man was your father at that time?

A. 47.

Q. So there was yourself, your father, Mr. Hal-lam and two other people, is that correct?

A. That is right.

Q. That was all the operating personnel you had with the Foster Transfer Company?

A. That is right—at that time.

Q. At the time you entered into this contract?

A. Yes.

Q. Now, how much experience had you had in just plain [44] hauling without any loading or un-loading?

A. I have been in the transfer business since 1937.

Q. 1937.

The Court: At the time your father was 47 years of age, how old were you?

The Witness: Well, that would be five years ago. I am now 29. I would be 24.

The Court: You were 24 years old when your father was 47?

The Witness: That is right.

(Testimony of L. H. Doolittle.)

The Court: Were you the president of the Foster Transfer Company when you were 24 years old?

The Witness: That is right.

The Court: You may inquire.

Q. (By Mr. Evans): Well, now, you have had experience since when? A. 1937.

Q. You started in this business when you were what age? A. About 18.

Q. How old are you now? A. 30.

Q. Now, how much experience had you had in crating and packing? A. Quite a little.

Q. How much experience had you had in moving furniture? [45] A. Quite a bit—a lot.

Q. A lot of experience in moving furniture?

A. That is right.

Q. How much experience had you had in the loading and unloading of furniture? A. A lot.

Q. And how much experience had you had in the loading and unloading of technical equipment such as radios and equipment of that nature which was used by the governmental agencies?

A. Well, I hadn't had too much because there isn't too much of it moved, but I think I had as much experience as the average drayman in the City of Seattle.

Q. Isn't it a fact that most of your experience in trucking prior to the beginning of this contract was where you would send a truck and somebody would load it for you and you would take it to its destination and somebody would unload it—maybe with a crane or some other piece of equipment?



(Testimony of L. H. Doolittle.)

A. No! No. Very little of that is done.

Q. Well, now, I do not mean under the contract. I mean prior to the contract.

A. No. That wouldn't be very practical.

Q. Now, under the contract which you entered into, isn't it a fact that according to the terms of that contract [46] the Procurement Division of the Treasury Department was the only governmental agency which was bound to do business with you, that others may have if they so desired?

A. That is right.

Q. In other words, according to the terms of this contract, The Procurement Division was bound to do business with your company and the other agencies could avail themselves of your services under that contract if they so desired?

A. That is right.

The Court: Did the Procurement Division have any connection with the Port of Embarkation? What local agency or government activity was identified with the Procurement Division of the Treasury Department, if any such agency was so identified?

The Witness: I don't know, Your Honor, myself. Maybe Mr. Street knows.

Q. (By Mr. Evans): Now, I believe you stated that no reasons were ever given to you as to why your contract was canceled. Was that your testimony?

A. That is right.

Q. Now, I will ask you whether or not—

(Testimony of L. H. Doolittle.)

Mr. Seering: Counsel, if I may interpose, my question which he answered was that at the time of the [47] letter, which is in evidence, no reasons were given.

Q. (By Mr. Evans): In the letter of February 20th, which is in evidence here, that had no reason stated in it as to why your contract was being canceled? A. I don't believe it did, sir.

Q. Now, isn't it a fact that very shortly thereafter you made inquiry as to the reasons why your contract had been canceled?—either you, yourself, or through somebody representing you?

A. I think my attorney did, if I am not mistaken.

Q. He wrote a letter inquiring into the reasons, isn't that correct? A. I believe so.

Q. And isn't it a fact that in answer to that letter you received a letter dated, I believe, about February 28th wherein a number of reasons were set out as to the reason for having to cancel your contract? Do you recall that?

A. No, I don't. The only letter I received on February 28, or thereabouts, was one of cancelation—that I remember.

Mr. Seering: The letter was addressed to our firm, Mr. Evans. I have the original here.

Mr. Evans: Do you care to introduce it?

Mr. Seering: Yes. You may, if you wish. [48]

(Letter in question presented to Mr. Evans.)

The Court: That will be marked Defendant's Exhibit A-3.

(Testimony of L. H. Doolittle.)

(Letter from Treasury Department, Procurement Division, Region 11, to Messrs. Maxwell & Seering, dated February 28, 1946, was marked Defendant's Exhibit A-3 for identification.)

Q. (By Mr. Evans): You have been handed what has been marked for identification as Defendant's Exhibit A-3. Will you look at it and state whether or not you can identify it?

The Court: May I make one suggestion as to that form of question? In many instances—possibly not this one—it would shorten the result desired by the question by asking him to state if he knows what that is. I just offer that for your consideration without making any requirement at all.

Mr. Evans: (Addressing the Reporter): Strike my question.

The Witness: Well, Your Honor, and Mr. Evans, I have never seen this letter before—to my knowledge, anyway.

Q. (By Mr. Evans): You have never seen that letter? A. I don't believe so. [49]

Mr. Seering: I will agree that it may go in, Counsel.

Mr. Evans: Very well, I will offer it on counsel's stipulation, then.

The Court: Very well, Defendant's Exhibit A-3 is now admitted.

(The letter heretofore marked Defendant's Exhibit No. A-3 for Identification was then received in evidence.)

(Testimony of L. H. Doolittle.)

The Court: You may read it now or later, according to your preferences or convenience. As a matter of fact, I am going to excuse those in this case as soon as you feel there is a convenient breaking point in the taking of testimony.

Mr. Evans: Well, I can break it at any time it is convenient to the Court.

The Court: Very well, at this time I will excuse those connected with this case until two o'clock.

(Thereupon, at 11:45 o'clock a.m., Tuesday, August 2, 1949, the proceedings in the above entitled and numbered cause was recessed to 2:00 o'clock p.m.) [50]

Seattle, Washington

August 2, 1949, 2:00 o'clock p.m.

(All parties present as before.)

The Court: You may proceed with the case on trial.

L. H. DOOLITTLE

the witness on the stand at the taking of the recess, resumed the stand and testified further as follows:

Cross-Examination

(Continued)

By Mr. Evans:

Q. Now, Mr. Doolittle, I believe you testified that you had had considerable experience in packing and crating and in hauling of the type under this contract?

A. That is correct.

(Testimony of L. H. Doolittle.)

Q. Now, to your knowledge, had Mr. Hallam had any experience in that line?

A. No, I can't say that he did. Mr. Hallam was hired primarily on this job that he was hired for to keep in contact with government agencies, to see that the work was performed by our men in a correct manner and to keep the government agencies notified and do it the way [51] they wanted it done. Mr. Hallum was not hired to perform any specific act. We could hire lots of men that could pack and crate — good men — from other sources. We had supervision. We had packing and crating men before this contract came up for the army, the Army Engineers. Our drivers — we had a number of drivers who were pretty good men.

Q. Well, now, as I understand, at the time you entered into this contract there were five employees for the Foster Transfer. How many of those men were drivers?

A. Perhaps one of them. I wouldn't say that any of them were.

Q. Now, after you started the execution of the contract, how many employees did you have?

A. Working on this contract at various times we had as many as 50 employees.

Q. How many? A. 50.

Q. 50. Were they regular employees or part time employees?

A. The majority of them were regular employees.

Q. Then your operation increased tenfold after you took over this contract?



(Testimony of L. H. Doolittle.)

A. Oh, no — the Foster Transfer business did. Yes; that is right.

Q. Now, you had 50 regular employees with the Foster Transfer [52] Company?

A. No, I didn't say that. I said the majority of them were regular employees.

Q. Well, about how many were regular employees?

A. On the average, about 35 to 40.

Q. Do you recall the approximate rate of pay that those men received?

A. Oh, I can't remember that far back.

Q. Well, was it a dollar an hour, fifty cents an hour——

A. No, the drivers were a dollar thirty-five, I believe, an hour; helpers were a dollar fifteen an hour—oh, I can't remember. It is too long ago.

Q. It was somewhere in the neighborhood of a dollar to a dollar thirty-five an hour?

A. Approximately that, yes.

Q. You never hired anybody for less than a dollar an hour for that type of work?

A. Whatever the union scale was. We paid union scale.

Q. Well, to your knowledge do you remember ever hiring anybody for less than a dollar an hour?

A. It would be closer to a dollar and a half.

The Court: Do you recall having paid out any extra dollars which by reason of their expenditure did not assist in maintaining an increase in earn-

(Testimony of L. H. Doolittle.)

ings or adding something to the earnings as an incident of this [53] cancellation? Did this cancellation leave you in a position, your company, where you were committed to certain expenses that you could not terminate as quickly as the effective date of this contract?

The Witness: Yes, sir.

The Court: Well, I would like to have your discussion of those items.

The Witness: Well, I had a number of leased trucks, trucks leased by the month over a period of time, which were working on this contract. I had four from one fellow, Ernest Rutgers; and I was paying him at that time \$250 a month for each one of those trucks and I had to pay him for one month after the contract was cancelled.

The Court: At \$250 per month?

The Witness: Yes, sir.

The Court: And you had to maintain that expense for at least a month afterward?

The Witness: For one month. And then I had a warehouse which we had leased to augment packing and crating, and I had to carry that on at the rate of \$75 a month, and I believe we had to carry that for three months.

The Court: Three. Now, I would like to hear that again. Mr. Reporter, would you please repeat the last statement of the witness?

(The last statement by the witness was then repeated by the reporter.)



(Testimony of L. H. Doolittle.)

The Court: \$75 for one warehouse?

The Witness: Yes.

The Court: Three months' expense?

The Witness: Yes, sir.

The Court: Would that be about \$225?

The Witness: That is correct.

The Court: Were there any other items comparable to that?

The Witness: No; that would be about the only thing I can think of. The books might show something else.

The Court: Did you have any salaried employees whose employment was necessarily continued and the continuance of such employment couldn't be avoided after the cancellation—when you did not need their services after the effective date of the cancellation?

The Witness: Yes, we did.

The Court: What is the detail about it?

The Witness: Well, we had two girls in the office that do the billing and book work on this contract, and we had a Mr. Hallam there who we had to keep. [55]

The Court: Wait just a minute. How long did you have to keep those two girls after the cancellation?

The Witness: We kept them for a month. We kept all our help for a month.

The Court: Do you know what the expense of those two girls' salaries was?

(Testimony of L. H. Doolittle.)

The Witness: \$250 a month, I believe, apiece.

The Court: That would be \$450.

The Witness: Yes, sir.

The Court: Now, Mr. Hallam, how much did you have to pay him after the cancellation?

The Witness: \$300 a month.

The Court: How many months did you have to keep him before you could discharge him——

The Witness: Well,——

The Court: ——after the cancellation?

The Witness: Well, now, I can't answer that directly, Your Honor, because we kept him on for several years after that.

The Court: Well, that would indicate that you needed his assistance.

The Witness: That is right.

The Court: Now, who else, if anybody, did you have to continue on the payroll after this cancellation but whose services you did not need and would not have [56] kept but for the fact that you had this contract before cancellation?

The Witness: Well, that is all I can think of.

The Court: Can you think of any other expenses, expense items, any other overhead which you were incurring while the contract was in force and which you did not need afterwards but which you were not able to discontinue for any substantial time after the cancellation? Let me know of any such items.

The Witness: I can't think of any at the present time.

(Testimony of L. H. Doolittle.)

The Court: You may inquire.

Q. (By Mr. Evans): Now, Mr. Doolittle——

Mr. Evans: First of all, if Your Honor please, I would like to read this exhibit to the Court.

The Court: You may do that.

Mr. Evans: This is a letter dated February 28, 1946, addressed to Messrs. Maxwell and Seering, Attorneys at Law, White-Henry-Stuart Building, Seattle 1, Washington, from the Treasury Department, Procurement Division, Region 11, 1524 Fifth Avenue, Seattle 1, Washington.

“Gentlemen: Your letter of February 25, 1946 is received. It is assumed that reference in your letter to a Treasury Department letter of February 12 is an [57] oversight, inasmuch as the only recent letter to the Foster Transfer Company from this office carried the date of February 20, 1946, cancelling Contract T11rp-156.

“We are unable to provide you with any appellate procedure in regard to this termination, inasmuch as the contract specifically provides, (Paragraph 21, Page 9): ‘The Government reserves the right to cancel the Contract at any time for what may be deemed good and sufficient cause.’ This provision supersedes the General Provision to which you have made informal reference, viz., Article 3, which reads as follows:

“3. Disputes. Except as otherwise specifically provided in this contract [underscoring supplied], all disputes concerning questions of fact arising

(Testimony of L. H. Doolittle.)

under this contract shall be decided by the contracting officer, subject to written appeal by the contractor within 30 days to the Secretary of the Treasury or his duly authorized representative, whose decision shall be final and conclusive upon the parties hereto. In the meantime the contractor shall diligently proceed with performance.

“Since Paragraph 21, Page 9, specifically provides for cancellation, there can be no question of our authority for doing so.

“In any event, however, we are entirely willing to supply a statement of the principal reasons for this action, as follows:

“1. During the contract period of approximately seven months numerous oral and some written notices and protests were filed with Mr. Doolittle concerning the inadequacy and generally poor condition of his automotive equipment. Complaints from Federal Agencies are on file in this office on this point. Our letters of September 26 and August 28, 1945 bear on this subject. No material improvement of the situation resulted from these protests.

“2. In a number of instances, open flat-bed trucks were provided by the contractor despite the fact closed trucks (or vans) were specifically ordered for specific jobs in inclement weather, with the result that Government property was damaged. In one instance, a federal agency ordered a closed van to transfer special technical radio and laboratory

(Testimony of L. H. Doolittle.)

apparatus. After a delay of two days, the contractor appeared on the scene with a flat-bed truck in inclement weather. In another case, Government furniture was rain damaged when moved on a flat-bed truck in wet weather, without adequate quilting. In still another case, a flat-bed truck was sent (in the absence of an available van) to move the household goods of a Federal Employee. This employee reported that the furniture [59] got extremely wet before it reached the contractor's warehouse. These are examples only.

“3. Despite numerous oral promises, Mr. Doolittle has either been unable or unwilling to provide an adequate number of trucks to efficiently perform the job.

“4. Frequently, Mr. Doolittle supplied trucks larger than necessary, or conversely, smaller than required, involving additional costs to the Government.

“5. By actual, first-hand experience acquired by us during the recent transfer of Government property from our Wallingford Warehouse, to 1518 First Avenue South, Seattle, and on a basis of complaints by other federal agency users, Mr. Doolittle's supervision and management were inadequate to the point where his employees either refused to perform efficient work, or were without proper direction to enable them to do so. In one instance, one of his employees, evidently intoxicated, attacked a Govern-



(Testimony of L. H. Doolittle.)

ment employee in the presence of Mr. Doolittle. Mr. Doolittle failed to intervene, although we understand he subsequently discharged the man.

“Criticism of Mr. Doolittle and his lack of management was frequently expressed by his own employees to our representative, both on and off the job. This expressed lack of confidence in his leadership noticeably depreciated the efficiency of his people and thus [60] prolonged the jobs for which the Government paid additional amounts of money. Moreover, this condition caused delays in effecting the transfer of Government property, often at great inconvenience and expense to using federal agencies.

“I regret the necessity for canceling this contract, but I had no alternative than to do so to protect the Government’s best interests.

“Very truly yours,” signed Wm. B. Ihlanfeldt, Regional Director.

Q. (By Mr. Evans). Now, Mr. Doolittle, do you recall having a conference on or about August 28, 1945, with the officials of the Treasury Department, principally Mr. Ihlanfeldt, or perhaps Mr. Street or Mr. Clark?

A. I personally have never talked to Mr. Ihlanfeldt in my life. I don’t know the man when I see him, but I did have a conference with Mr. Street and with Mr. Clark.

I don’t know if that is the one I went to talk on or not, because it was costing me a lot of money in the thing and I requested a conference with them.



(Testimony of L. H. Doolittle.)

We would have a pickup to go out on a job, or some government agency would want us, and we would get there and have to wait two hours, or they would still be in bed—the people wouldn't be out of bed yet and the dishes wouldn't be washed yet when we would try to [61] move their household goods, and it was costing us a lot of money. And we told them we would have to make a charge for it if there wasn't something done about it.

Do you remember that, Mr. Street?

Was that conference mentioned in that letter the 28th?

Q. Well, at the conclusion of that conference did you receive a letter from Mr. Street?

A. I talked to Mr. Street and Mr. Clark twice, and each time I received a letter from them.

Mr. Seering: Counsel, I have the originals of both of those letters, if you wish them.

Mr. Evans: Do you mind if they are introduced?

Mr. Seering: No.

Mr. Evans: Mark these for identification; that one first and then this one.

(Letter from Treasury Department, Procurement Division, Region 11, to Foster Transfer Company, Inc., dated August 28, 1945, marked Defendant's Exhibit No. A-4.)

(Letter from Treasury Department, Procurement Division, Region 11, to Foster Transfer Company, Inc., dated September 26, 1945, marked Defendant's Exhibit No. A-5 for identification.)

(Testimony of L. H. Doolittle.)

Q. (By Mr. Evans): Now, will you look at what has been marked for identification as Exhibit A-4 and state [62] whether or not you know what it is?

A. That is the one I was just talking about: that is correct.

Q. I will ask you whether or not that is the letter which you received from officials of the Procurement Division of the Treasury Department on or about August 28, 1945.

A. That is right.

Mr. Evans: We offer Plaintiff's Exhibit A-4.

Mr. Seering: No objection.

The Court: Admitted.

(The letter heretofore marked Defendant's Exhibit No. A-4 for identification was received in evidence.)

Q. (By Mr. Evans): Now, will you look at what has been marked for identification as Exhibit A-5, and I ask you whether or not you know what that is?       A. Yes.

Q. I will ask you whether or not that is a letter which you received on or about September 26, 1945, from the Procurement Division, Treasury Department?

A. That is correct.

Mr. Evans: I offer Defendant's Exhibit A-5.

Mr. Seering: No objection.

The Court: Admitted. [63]

(Testimony of L. H. Doolittle.)

(The letter heretofore marked Defendant's Exhibit No. A-5 for identification was received in evidence.)

Q. (By Mr. Evans): Now, isn't it a fact that in your conference which you had on August 28, 1945, that your attention was called to the inefficiency of your company in performing work under this contract?

A. No, I don't believe you would call it inefficiency. Mr. Clark and Mr. Street—I went down and we talked the situation over. They brought up some points which we failed to do a good job on. Do you call that inefficiency when someone doesn't know about something until maybe a week or two after it happens and there is nothing you can do about it then? If they told you at the time, you might be able to do a good job.

Q. I ask you whether or not at the time of these conferences they told you about complaints which they had received on your services? Do you recall that from memory?

A. No, I don't remember. I don't remember any complaints at that time being talked of. We talked about the contract in general, and Mr. Clark seemed to be very interested in it. I wish he were here. He tried to help me as to—tell me what he thought should be done. In fact, we sat down and we worked out a program, a [64] tentative program that we could follow to a certain extent.

Q. What kind of a program?

(Testimony of L. H. Doolittle.)

A. Well, as to getting—assigning each one of the government jobs a number and keeping a complete record of each job which we did, the time the people ordered the trucks, and so on and so forth, so that there wouldn't be any complaint. We could go back for a month or so and tell what we had done. And we tried to comply with their wishes.

It is pretty hard in the trucking business or transfer business, where unexpected things arise, if somebody orders a truck for one o'clock, to have that truck at one o'clock if the truck is on a job at 11:00 o'clock, because they might not get through in time and you figure on trying to get that truck there at one o'clock and it doesn't arrive until 1:30. There is not much you can do about it.

The Court: For my convenience in this connection, will you repeat what you have already said as to what was the effective date of the cancellation of this contract?

The Witness: February 28.

The Court: February 28?

The Witness: Yes, sir; 1946. [65]

The Court: What was the date of the notice, if any, given to you of the intention to cancel on that date?

The Witness: February 20th, 1946.

The Court: You never had any notice before February 20th of intention by the government to cancel on the 28th of February?

The Witness: No, sir.

(Testimony of L. H. Doolittle.)

The Court: So the cancellation took effect eight days before—after the date of notice?

The Witness: That is correct. This letter was written on the 20th, so approximately eight days, Your Honor.

The Court: When did you receive that letter dated the 20th?

The Witness: Oh, probably the next day—the 21st.

The Court: You may resume your examination.

Q. (By Mr. Evans): Well, now, as I understand, the officials of the Treasury Department were endeavoring to assist you to overcome these complaints; is that right?

A. No, sir. There were no complaints. They were endeavoring to help me work out—Ken Clark was endeavoring to help me work out the thing so as to eliminate some [66] of the grief he had on the previous contract, because they had quite a few complaints on the contract and he didn't want to get in the same boat that they were before.

Q. Where did you get the information that they had any grief on the previous contract?

A. From their conversation.

Q. Will you refer to the last paragraph of the letter of August 28, 1945, wherein it states: "It is sincerely hoped that the standard of performance under this contract will be improved as a result of our discussion, and such corrective measures as you believe necessary will be applied. If complaints con-



(Testimony of L. H. Doolittle.)

tinue and are found to be justified, we should otherwise be forced to seek relief in accordance with the terms of the contract. We hope this will not be necessary.”

The Court: What date—may I ask the witness what date, if he knows, was that?

The Witness: That was August 28th, Your Honor.

The Court: What year?

The Witness: 1945.

The Court: And what was the date of execution of the contract?

The Witness: July 3rd—July 1st, 1945.

Q. (By Mr. Evans): Well, then, on August 28, 1945, you were [67] aware that the Treasury Department would take action to cancel your contract if the performance by your company was not satisfactory, isn't that correct?

A. Mr. Evans, I was aware that the Treasury Department would take steps to cancel this contract if they could, perhaps, within a week after it was written.

The Court: What was the date of that letter from which you read?

Mr. Evans: August 28, 1945.

Q. (By Mr. Evans): Now, as I understand, you again had a conference with the officials of the Procurement Division on or about September 26th, is that correct? A. That is right.

Q. And at the conclusion of that conference you received the letter which is marked Exhibit A-5?



(Testimony of L. H. Doolittle.)

A. That is right.

Mr. Evans: I would like to read that letter to the Court, if I may at this time.

The Court:- You may do so.

Mr. Evans: I would like to read from the original rather than this photostatic copy, if I may.

(The original of the letter in question was presented to Mr. Evans.)

Mr. Evans: Reading Exhibit A-5, a letter from the Procurement Division, Treasury Department, dated [68] September 26, 1945:

“Foster Transfer Company, Inc.

1310 East Pine Street

Seattle 22, Washington

Attention: Mr. H. L. Doolittle

Gentlemen:

“Reference is made to our discussion this forenoon concerning your service contract No. T11rp-156, with specific reference to Item No. 2(A).

“I have reviewed the record and regret to tell you that I can see no way by which an amendment to the contract can be made, or any concessions legally granted to you. As I understand it, you are chiefly concerned about the small items of household goods aggregating less than 1,000 pounds. Your quoted price, 75c per hundred pounds, is identical to that extended by another bidder at the time award of the entire contract was made to your firm. There is no evidence, therefore, that any mechanical

(Testimony of L. H. Doolittle.)

error occurred in the statement of price when the bid was submitted.

“I understand, in a discussion you had with Mr. G. K. Clark, purchasing and contract officer in this office, it was your contention that your representatives have been required, in some cases, to await the convenience of the Government employee whose household goods were to be moved, thus resulting in a loss of time for [69] which no compensation can be granted. I am informed, however, that you have been asked to supply this office with details of future similar instances so that the cause can be removed. We shall be very glad to cooperate fully with you in this direction.

“The review of the record and discussion with Mr. Street brought to light certain criticisms of your services which already have been enumerated in his letter of August 28 to you. I only want to add a word of caution to you to comply fully with the intent and letter of the contract. The contract provisions contemplated clearly that you must be in position to supply all equipment and manpower and other services promptly and in an efficient manner and, aside from the fact that any deficiencies on your part jeopardize your present contract and your surety, any unsatisfactory experience with this particular contract will be an important factor in the award of any future contracts. A service contract of this nature will be a permanent arrangement hereafter, so full compliance with its terms, I am

(Testimony of L. H. Doolittle.)

sure you agree, will be an important concern to you in the long run.

“Very truly yours;”

/s/ “WM. B. IHLANFELDT,  
Regional Director.”

Q. (By Mr. Evans): I understand that you received that [70] letter September 27, 1945; is that correct? A. That is right.

Q. You read it? A. Yes.

Q. And you still want this Court to believe that you were unaware of any deficiencies or anything unsatisfactory on the part of your company?

A. I would like to have one specific instance which was ever set forth. I personally, or any of my men working for me, do not and did not know of one specific instance where we had any appreciable trouble or caused any delay of any kind. I mean specific. I can generalize, but personally I don't know of one specific instance where due to our negligence or due to my men's negligence we caused the government any amount of money, or lost time, that we personally in any way could have avoided, because we were sure watching that work. We watched that work more than we ever watched any other contract I ever had, and we had more——

Q. Well, now, the specific question I want to ask you: Do you still testify before this Court that you were not aware of the fact that the Treasury Department was not satisfied with your services?

A. Yes.

(Testimony of L. H. Doolittle.)

Q. In spite of the fact of these two letters received by [71] you? A. That is right.

Q. Now, were you on the job all the time?

A. Yes.

Q. Were you out supervising the work being done by your men?

A. I was in the office and outside, both.

Q. Now, do you recall the time when you went down with Mr. Hallam to the Alaska Communications System to talk about moving some heavy radios? A. Yes.

Q. Do you recall that the officer in charge wanted you to use a gate-lift truck?

A. A lift-gate? Yes.

Q. A lift-gate. Now, will you just describe to the Court here briefly; what is a lift-gate truck?

A. A lift-gate truck is a truck which has a platform attached to the rear of it which is raised and lowered—raised and lowered to the ground, and raised to the height of the truck by a hydraulic hoist.

Q. Now, I will ask you if it isn't a fact that the official you talked to at the Communications System stated that that was the type of equipment he wanted you to use in moving these heavy radios?

A. That is right. [72]

Q. I will ask you whether or not it isn't a fact that you deliberately told him you had such a truck when, in fact, you did not have such a truck?

A. I did tell him that, and I did have one.

(Testimony of L. H. Doolittle.)

Q. You didn't have one?

A. I did have one.

Q. You did have one?           A. Yes, sir.

Q. You are certain of that?

A. Well, we used it all the time; I guess we had it.

Q. Well, is that this van that it speaks of in your statement?

A. No, sir. This truck belonged to W. C. Chesney Transfer Company.

Q. Now, isn't it a fact that within a day or so thereafter you were called upon to move some of these heavier radio units?

A. That is right.

Q. And that you did not send the type of truck that they wanted?

A. We did not. The lift-gate truck was not available at the time he wanted it, and I called the sergeant and talked to him. And he said, "Well, I think you can move it on a flat-bed." I went down with a flat-bed myself and moved it. That is all there was to it. [73]

Q. In spite of the fact that they originally ordered a gate-lift truck?

A. That is right. I told them they could wait and get it in the morning, and he said, well, they wanted to move it that afternoon.

Q. In other words, you did not have the equipment that they wanted at the time they wanted it?

A. That is right. If they call at 11:00 in the



(Testimony of L. H. Doolittle.)

morning and want you to have a truck at 1:00, it is sometimes pretty hard.

Q. Isn't it a fact, on numerous other occasions other than the 28th of August and the 26th of September, that you had oral conversations either by telephone or person to person with the officials of the Treasury Department in regard to complaints on your contract?

A. No, I wouldn't say so. I talked to Ken Clark several times. I went in down there to talk to him. We talked over things. Personally, I can't think of one concrete example of a complaint. We talked about performance, how we were getting along. Personally, I can't remember one concrete example of a complaint.

Q. Well, isn't it a fact that they told you that they had received complaints?

A. I wouldn't say so. I don't know.

Q. You don't recall that they told you that your performance [74] was not satisfactory?

A. No, I don't.

Q. But you wouldn't deny that they did tell you that, though?

A. I wouldn't deny it, but I pretty near would.

Q. Now, in December of 1945, isn't it a fact that you made some complaint to the Treasury Department, that they were asking for bids on a move of a warehouse for the Treasury Department?

A. I couldn't tell you the date, but I did make a complaint about it.



(Testimony of L. H. Doolittle.)

Mr. Seering: If Your Honor please, I do not think this is proper cross-examination. I did not go into it on direct.

Mr. Evans: Well, if it please the Court, what I am going into——

Mr. Seering: (Interposing.) I do not see what bearing it has on the question of the quality of performance under the contract. In other words, I am not trying to keep the evidence out, but I just don't think it is proper at this time. The fact which counsel referred to is that the Department called for bids on particular work and the Foster Transfer Company, through me, made a demand on the Department for the performance of that work under the existing contract, and as a result of that contention it eventually was awarded to us. [75] I do not think it is proper at this point. I am not going to urge it strenuously, however.

The Court: I will hear from opposing counsel.

Mr. Evans: Well, what I propose to go into are the circumstances which came up and the dissatisfaction with regard to this move.

The Court: The objection is overruled.

Q. (By Mr. Evans): Now, as I understand, you did undertake to move the Treasury Department warehouse from out here on Wallingford and another place down here on 8th Avenue to a place down on 1st South, is that right?

A. That is right.

(Testimony of L. H. Doolittle.)

Q. And do you recall approximately how long it took you to perform that move?

A. No, I don't.

Q. Would from the 18th of December to the 18th of January strike you as proper dates during which you performed that move?

A. I can't say.

Q. I will ask you whether or not that wasn't a rather large operation?      A. Not too large.

Q. It wasn't too large an operation?

A. No.

Q. About how many men did you have employed on that job? [76]

A. Oh, it runs in my mind that there were about eight or 10 out at Wallingford and about 15 or 20 down at 1st South. It is just general figures. I can't remember.

Q. About how many down at 1st Avenue?

A. Mr. Street can tell you this better than I can. I don't know. Around 15. Whatever the government called for. The government told us how many men to have there and when they wanted them.

Q. Now, were these employees that you had at these places regular employees?

A. Some of them were.

Q. How many?

A. Oh, maybe half of them.

Q. Well, now, Mr. Doolittle, isn't it a fact that every day you would go down to the hiring hall and hire a new crew?

(Testimony of L. H. Doolittle.)

A. No. We would hire them when we needed them. We would go down the same as we do today.

Q. Isn't it a fact that there was only one man on that job continuously at Wallingford during the entire move?

A. That I can't tell you; I don't know.

Q. And isn't it a fact that complaints were made to you that the job was not going efficiently and it was not being handled properly and that you replied that you were unable to secure adequate help?

A. Oh, there could have been—we talked about different [77] things that we could do; about speeding the job along; different equipment we could get; and, sure, we talked about the job—the same as I talk about every job that I do. I went to the army; I went to the army personnel; the Port of Embarkation; I got lifts from the army to use in the warehouse out there.

Q. You got what?           A. Platform lifts.

Q. You mean a fork-lift truck?

A. No, hydraulic lifts that run on a floor. You push them by hand. And in their warehouse out there they couldn't use anything. They didn't have any facilities to use anything.

Q. Who didn't have any facilities?

A. The Treasury.

Q. Well, now, wasn't your company the one who was supposed to make the move?

A. We didn't get paid for furnishing that

(Testimony of L. H. Doolittle.)

equipment. All we had to do was furnish the trucks and the labor. That is what our contract called for. That is what we did. I spent many hours on that job.

Q. In other words, do I understand that you don't consider it a part of your contract to move the warehouse merchandise out of the warehouse and onto your trucks?

A. Why sure, that is right. But I went and—in order to [78] speed the job up, in order to do a better job of it, on my own personal initiative, I went and got equipment.

Q. Who from?           A. From the army.

Q. In other words, you went to another governmental agency to borrow equipment to perform your work?

A. Not my work; work for the Treasury—for which I didn't get paid.

Q. Well, now, weren't you paid for this move?

A. I was paid on man hours, for every hour a man worked and for every hour a truck worked. It didn't make any difference to me whether those men moved two ton of freight in an hour or a hundred ton.

The Court: I think counsel was asking you: What was your experience on this particular task? Is that what you are responding to?

The Witness: Yes, that is what I am telling, Your Honor.

A. (Continuing.) Well, I worked on that

(Testimony of L. H. Doolittle.)

Wallingford move myself many days. I tried to do a good job of it, and we did a very good job of it whether they think so or not.

Q. Isn't it a fact that many complaints were made to you?—that the job was taking entirely too long?  
A. We made an estimate on that job.

The Court: No. Try to answer it directly and then make any explanation you may wish. You go too far afield otherwise.

The Witness: A question like that, I can't answer it yes, because it would be wrong; and I can't answer it no, because it would be wrong.

The Court: What was your question again, Mr. Evans?

Q. (By Mr. Evans): Will you state whether or not complaints were made to you that it was taking too long to complete this move?

A. Four or five years is a long time; I can't remember. There probably were complaints, yes.

Q. As a practical matter, you were taking about twice as long as other bidders stated they could make the move in, isn't that a fact? Wasn't that made known to you?

A. I can't answer that because I don't know. But we made an estimate—can I go into that now?

The Court: Yes.

A. (Continuing.) We made an estimate in writing as to the length of time we thought it would take to do the job and I can't tell you how many days longer than the estimate we took, but

(Testimony of L. H. Doolittle.)

it runs in my mind that it was four or five days longer. And that was strictly an estimate.

Q. As a practical matter, it took you about 19 days to complete [80] the move, didn't it?

A. I can't tell you that. But whatever it was, it was four or five days longer than our estimate; and part of that delay, the four or five days, was on account of government elevators which were broke down, and we couldn't work, and on account of inclement weather in which the Treasury Department desired us not to work.

Q. Well, now, isn't it a fact that the Treasury Department, in order to expedite the move, had to put on one of their own trucks in order to assist in that move?

A. They didn't have to, but they did, because the truck was sitting idle and they might just as well use it. We had plenty of equipment.

Q. But if you had plenty of equipment, why couldn't you have made this move within your estimate?

A. It was not equipment which held us up; it was government elevators which were broke down.

Q. How long were they broken down?

A. Well, off and on—all the time. And on account of the rain——

The Court: I hope counsel can find some way to expedite the examination.

Mr. Evans: If there are some *ex parte* matters, I would be glad to break it at any time.



(Testimony of L. H. Doolittle.)

The Court: Are there any *ex parte* [81] matters or matters upon agreement to come before the Court?

You may proceed.

Q. (By Mr. Evans): Now, do you recall the time when a number of shelves were loaded on a truck—I believe at Wallingford—and taken down to the new warehouse on 1st Avenue and you had difficulty in unloading them?

A. Those shelves were purchased from the War Assets at the Renton—Boeing plant and they were loaded at the Renton-Boeing plant with fork-lifts in an upright position, and then the ones on top were laid down by fork-lifts. And when they got down to the new warehouse they had no means whatsoever to get these shelves off the truck except by labor. And they were piled on the truck six foot high and then one laid on top. And the shelves, as you people are probably acquainted with, are those collapsible shelves which are just set on top of a screw so you can pick them up and make them any height you want, and in order to get them off the truck they had to take hold of them by hand and lift them. And these shelves were all loose in there, and they come out and they collapsed, and we had a terrible time with them. In fact, one fellow went to the hospital over it. One of them fell on him.

Q. Well, now, isn't it a fact that at the time these shelves arrived that you wasted about an

(Testimony of L. H. Doolittle.)

hour or two discussing with your men how you might get those off of there? [82]

A. I probably spent longer than that because we had no way to get them off except to just take ahold of them and get them off. And that is what we finally did.

Q. Well, then, you admit that you were not experienced enough to know how to handle a job like that?

A. No. I had plenty of experience to handle it, but it was just one of those things. The way the War Assets of Renton loaded them, we couldn't get them off because they were laying flat and you go to pick up one of them and the shelves would come off, and that is all that holds them together.

Q. Isn't it a fact that you were not able to do anything about it until finally permission was given for you to dismantle them and take them off?

A. That is correct.

Q. In other words, your company was charged with the responsibility of loading the equipment as well as unloading, wasn't it?

A. Well, War Assets at Renton loaded them. We did not load them.

Q. In other words, you chose to let them load them for you rather than load them yourself so you could handle them?

A. No. The Treasury Department made arrangements with the War Assets to pick up the shelves, and we were to have a truck out there at

(Testimony of L. H. Doolittle.)

a certain time to get the shelves. [83] We did. And they loaded the shelves and we brought them into town. And then the War—the Treasury Department wanted us to unload them, and we finally did.

Q. During the time when that truck was standing there while you were trying to figure out how to unload it, isn't it a fact that several other trucks were kept idle because they could not get in to unload?

A. There were several trucks there waiting, yes. In fact, I made the truck pull out and unloaded the other trucks first.

Q. I don't know whether I have asked you clearly this question yet, but can you state how many experienced people you had on this move?

A. All the truck drivers.

Q. The truck drivers were experienced. How were the men who were loading and unloading?

A. At Wallingford I happen to know of three men who are very good men, and at the south end, at 1st Avenue South, my dad was there all the time. I was there quite a bit of the time; not all the time. I couldn't devote all my time to it. We had some very good men down there.

Q. Well, now, who was at Wallingford?

A. Mr. Hallam, for one.

Q. And your father was at the 1st Avenue place?

A. That is right. [84]

Q. Who was at the 8th Avenue warehouse?

(Testimony of L. H. Doolittle.)

A. We were not moving anything out of the 8th Avenue warehouse at that time. We moved that later.

Q. And you were at both places at times?

A. That is right.

Q. Now, who was supervising the other work which you were doing for the government?

A. I was.

The Court: Twenty minutes more is awarded—or allowed for further examination of this witness. Proceed.

Q. (By Mr. Evans): You caused an appeal to be made to the Secretary of the Treasury, if I am not mistaken, under the provision of the contract to settle disputes on questions of fact.

A. Well, I believe so. My attorney could answer that better than I could.

Q. Well, you were president of the corporation, weren't you? A. Yes.

Q. And don't you know that an appeal was made to the Secretary of the Treasury?

A. Yes, there was.

Mr. Evans: I believe it would be appropriate at this time to have this marked for identification.

The Court: All right. [85]

(Photostat copies of papers in files of Bureau of Federal Supply re contract No. T11rp-156 with Foster Transfer Company, Inc., numbered 1 thru 76, certified by Treasury Department, marked Defendant's Exhibit No. A-6 for identification.)

(Testimony of L. H. Doolittle.)

Mr. Evans: I would like to offer at this time certified copies of the files of the Treasury Department, of their review of the Regional Director's action in canceling this contract. As I understand, Counsel has no objection; is that correct?

Mr. Seering: Yes, with the understanding that any documents herein contained are admitted as a part of the official file and not as proof of any independent facts stated in the documents.

Mr. Evans: Yes. They are only offered for that. I am not trying to prove any facts other than that.

The Court: Are both sides agreed as to what that is that the bailiff holds in his hand, namely, Defendant's Exhibit A-6? Is it a certified copy, certified by the head of the Treasury Department or by the proper certifying officer? Is it such a certified copy of the files and records of the Treasury Department, Procurement Division, in respect to this matter?

Mr. Evans: I claim it is, Your Honor.

Mr. Seering: Well, on counsel's statement, I agree. [86]

The Court: Defendant's Exhibit No. A-6 is now admitted.

(The document heretofore marked Defendant's Exhibit No. A-6 for identification was admitted in evidence.)

Q. (By Mr. Evans): I will ask you whether or not you have seen or received the action taken



(Testimony of L. H. Doolittle.)

by the Secretary of the Treasury in regards to that appeal?

A. I believe my attorney had a copy of it.

Q. Well, I will just ask you whether or not you know, of your own knowledge, that your appeal was denied.

A. Yes.

Mr. Evans: I have no further examination of this witness at this time. I would like to reserve the right, perhaps, to call him later as an adverse witness.

The Court: That right is reserved.

Mr. Evans: I beg your pardon?

The Court: That right is reserved.

Do you wish to ask him anything on redirect?

#### Redirect Examination

By Mr. Seering:

Q. Mr. Doolittle, sometime shortly after you entered into this contract with the Treasury Department, Procurement Division, did you have any difficulty with Mr. Street [87] who is sitting here now at the counsel table?

A. No. Not personally, no.

Q. Well, to refresh your recollection, and calling your attention particularly to a question of demurrage on a shipment, was there any discussion of that nature?

A. Yes, there was. There was a carload of paper which came in here from the East, or from some destination. It sat on the team-track for many days—probably a week—and we were asked.



(Testimony of L. H. Doolittle.)

—after it sat there for about a week, we were notified that it was out there and we went out that afternoon. We were called sometime in the afternoon. And we went out and we worked overtime, and Mr. Hallam, myself and two other men worked until quite late that night, and we unloaded the car to save any further demurrage. And then after it was all over, why, the Treasury Department thought that we should be liable for the demurrage because it sat out there so long. And we didn't know anything about it. We hadn't been notified or anything.

Q. You say the Treasury Department. Who, specifically?

A. Well, specifically it was through Mr. Clark and Mr. Street. They were the two men in charge.

Q. Had you any difficulties at all prior to that date—any question as to your service?

A. No, we hadn't—not to my knowledge. [88]

Q. Did you, after that time, with Mr. Street?

A. No; I never had any direct controversy with Mr. Street. In around about ways different things came up.

Q. Now, counsel has asked you about the Wallingford move in December of 1945. What were the facts in regard to that? Were you sent a copy of an Invitation to Bid and Acceptance which was issued by the Treasury Department on that move?

A. No, I was not.

Q. Where did you learn of it?

(Testimony of L. H. Doolittle.)

A. My man, Mr. Hallam, heard about it.

Q. Did you obtain a copy of that invitation?

A. With your help I did.

Q. And what did you do after getting that copy?

A. We made a protest to the Treasury Department, to the effect that we already had a contract covering that work so that there was no need to let another contract to do that same work.

Q. I was talking to the bailiff. What was your last answer?

A. I said we protested to the Treasury Department saying that we already had a contract covering that work and that we saw no need for them to let another contractor do it.

(Letter from Foster Transfer Co. to Treasury Department, dated December 15, 1945; letter from Harold A. Seering to Treasury Department, dated December 12, 1945; letter from Treasury Department to Foster Transfer Company, dated December [89] 14, 1945, with Invitation to Bid T11rp-46-104 attached, marked Plaintiff's Exhibit No. 4 for identification.)

Q. (By Mr. Seering): You are being handed Plaintiff's Exhibit 4 consisting of three separate documents. Will you tell us what that is, if you know?

A. The first one is a letter to the Treasury Department saying——

(Testimony of L. H. Doolittle.)

Q. Well, just to whom and from whom and pertaining to what without reading the contents.

A. Well, the Treasury Department, Procurement Division, 2028 8th Avenue, Seattle 1, Washington, attention of D. K. Clark, Chief Contract and Purchase Section, and it is from Foster Transfer Company.

Q. And pertaining to what subject matter?

A. It pertains to awarding of another contract to do this move from Wallingford.

Q. All right. Will you identify the others?

A. This was to the U. S. Treasury Department, Procurement Division, 2028 8th Avenue, Seattle 1, Washington, to Mr. Clark, and this again is in regard to this move on this contract, and it is from Maxwell and Seering, attorneys.

Q. And what is the third document?

A. And this is a letter from the Treasury Department to Foster Transfer Company, 13th and East Pine Streets, in [90] regard to the movement of government owned equipment and supplies from the warehouse at Wallingford.

Q. Signed by?

A. By G. K. Clark, Chief of Contract and Purchase Section.

Mr. Seering: I offer Exhibit 4.

Mr. Evans: No objection. Do I understand that they are altogether?

The Court: Admitted. The answer to your question is yes.

(Testimony of L. H. Doolittle.)

(The papers heretofore marked Plaintiff's Exhibit No. 4 for identification were received in evidence.)

Q. (By Mr. Seering): And after that exchange of correspondence the work was awarded to you under your existing contract?

A. That is right.

Q. Now, you testified that you furnished a bond, as required by the contract, in the amount of \$10,000?

A. I did.

Q. Were any claims ever filed against your bond?

A. No.

Mr. Evans: I am going to object to this line of testimony. I don't believe it to be material at all, whether or not the government ever elected to proceed against the performance under the contract, and I am [91] objecting because I don't believe, for the purpose of the record, that it is competent evidence to be received.

The Court: Well, that objection is overruled.

Q. (By Mr. Seering): Had you answered the question?

A. Yes, we did furnish a bond in the sum of \$10,000 and there was never any complaint or anything drawn against that bond.

Q. Now, counsel inquired of you in regard to your showing of gross returns for the Foster Transfer Company on this annual report to the Department of Transportation for the years 1945 and 1946. Were those returns prepared by you?

(Testimony of L. H. Doolittle.)

A. No, they were not.

Q. Did you, yourself, have any direct knowledge as to the returns other than having executed them?

A. No. It just happens that I didn't execute them, Mr. Seering; someone else did.

Q. You referred this morning to having taken the total gross volume of business under this contract from your records which are here. Do those records show in regard to this particular account the invoice numbers?

A. Yes, they do.

Q. And can they be checked against the original invoices?

A. They can.

Q. And is that total the correct total of the gross volume of business? [92]

A. That total which you and I added yesterday, that is on that tape, is the correct total.

Q. And that can be verified by these records here?

A. That is right.

Q. Now, as to the number of employees and the amount of equipment owned by Foster Transfer Company, what is the situation as to the ownership of equipment used in the performance of this contract?

A. The equipment which was used on this contract was owned by me—Doolittle Trucking Company. I, in turn, leased the equipment to Foster Transfer Company for use on this contract or any other work that Foster Transfer had.

Q. As I understand it, you were operating also as Doolittle Trucking Company?



(Testimony of L. H. Doolittle.)

A. That is correct.

Q. And was that a corporation or as an——

A. An individual.

Q. Individual. And what is the reason for the separate operation?

A. Well, the reason was on account of the State Department of Transportation permits which are issued to cover a—specific types of operation which a permit can do.

Q. Are those permits transferable?

A. No, they are not.

Q. In the absence of authority from the State Department? [93]           A. No.

Q. So that the permit, as I understand it, is limited as to its geographical area as well as the type of commodity which may be transported under it, is that correct?           A. That is right.

The Court: I am sure both sides are taking too much time with this witness. I believe the ground can be covered much more quickly by both sides.

Mr. Seering: I am sorry, Your Honor. I am doing it as rapidly as I know how.

Q. (By Mr. Seering): Referring to the move for the War Assets—for the Treasury Department from the War Assets Administration at the Renton—Boeing plant, did you have any discussion with the government representatives before those shelves were loaded as to the manner of loading?

A. No.

Q. As I understood your testimony on that, your



(Testimony of L. H. Doolittle.)

job was simply to move them after they were loaded, is that correct?       A. That is right.

Mr. Seering: That is all.

The Court: We will take a 10 minute recess.

(Whereupon, a 10 minute recess was taken.)

(All parties present as before.) [94]

The Court: You may proceed. The witness was on the stand. Unless counsel on both sides are finished, he will resume the stand.

Mr. Seering: He was excused, Your Honor.

The Court: Both sides excuse the witness who was on the stand? If there is anything further, the Court will wait and have him recalled to the witness chair now.

Will the witness resume the stand for further examination?

Q. (By Mr. Seering): Mr. Doolittle, I have just one further question. The incident which is mentioned in the letter of Mr. Ihlanfeldt, dated February 25th—or 28th, I believe, of one of your employees attacking a government employee in your presence, what are the facts with regard to that incident?

A. Well, I wasn't there to begin with. I got there about an hour after it happened. And the man had been drinking—several of them had. When the trucks would be finished loading, the boys, before another truck would come in, they would go across the street for a few minutes, I guess, for a drink. And what brought the controversy to a

(Testimony of L. H. Doolittle.)

head was, one of the government employees wanted the fellow to sweep the floor while he wasn't doing anything else, and he said no.

Q. What did you do with regard to disciplining the employee? [95]           A. He was dismissed.

Q. Beg pardon?           A. He was dismissed.

Mr. Seering: That is all.

The Court: Was that one of the persons who was referred to by you just now when you said the persons had been drinking? Was that the—was that person whom you dismissed included among those referred to by you as persons who had been drinking?

The Witness: Yes.

The Court: Proceed.

#### Recross-Examination

By Mr. Evans:

Q. Was this an employee who had been drinking?           A. Yes.

Q. To your knowledge, had anybody else been drinking?

A. From what I could find out, there had been a couple of them drinking.

The Court: A couple of men?

The Witness: Yes.

The Court: Whose men? Your men or the government men?

The Witness: Of mine.

Q. (By Mr. Evans): In other words, you received no information to the effect that the government men had been [96] drinking, did you?

(Testimony of L. H. Doolittle.)

A. Did I? No. I didn't try to.

Q. Now, these men while on the job working for the government had been drinking, is that correct?

A. That was what I found to be correct.

Q. Now, as I understand your previous testimony, you took in a gross of \$52,000—fifty-two thousand and some odd dollars gross business off this contract during the eight months it was in existence?

A. That is right.

Q. And you claim that your profit was in excess of \$13,000?

A. That is approximately what its was, yes.

Q. That was during the eight months?

A. Yes.

Q. Now, was there any difference in the amount of revenue you were taking in, any substantial difference, from month to month?

A. Well, I can't answer that.

Q. Well, what I am trying to get at, were the months of January and February substantially different from the months of November and December, let us say?

A. Again, I can't answer. The only month I know that would be greatly different from the other was the month of July.

Q. And that would be greatly different in what regard?

A. Much smaller. [97]

Q. Much smaller. Well, would you say that the rest of the seven months was approximately equal as to the volume of business you were doing?

(Testimony of L. H. Doolittle.)

A. I would say so, yes.

Q. Now, as I understand you, you used the trucks of Doolittle Trucking Company and the Foster Trucking Company interchangeably?

A. Yes.

Q. In other words, you have certain permits for the Doolittle Trucking Company and you have other permits for the Foster Transfer Company and you just switch the trucks back and forth at your convenience?

A. That is right.

Mr. Evans: I would like to have this marked for identification, please.

(Report entitled Annual Report of common and contract motor carriers of property to the Department of Transportation for the year ended December 31, 1945, marked Defendant's Exhibit No. A-7, for identification.)

Q. (By Mr. Evans): I hand you what has been marked for identification as Defendant's Exhibit A-7. Will you take a look at it and see if you can determine what it is?

A. It is an annual report of L. H. Doolittle, an individual, for the year 1945. [98]

Q. Do you recall submitting the original of which that purports to be a copy to the authorities to which you are supposed to submit it to?

A. Well, it is a copy. I don't remember, but it was submitted.

Mr. Evans: I will offer Defendant's Exhibit

(Testimony of L. H. Doolittle.)

A-7. On the face of it—that is, on the back of it—it has the proper attestation by the officer who is the custodian of those records at Olympia together with the certification by the Secretary of the State that he is the proper officer to make such a certified copy.

Mr. Seering: No objection.

The Court: Admitted.

(The report heretofore marked Defendant's Exhibit No. A-7 for identification was received in evidence.)

Q. (By Mr. Evans): Now, will you look at that report, under what I believe is Schedule 4? Does it show a profit or loss for the year 1945? It is down at the bottom of the page. I believe it to be page 2.

A. It shows a loss.

Q. How much? A. \$7730.21.

Mr. Seering: That is objected to, Your Honor. I don't see what relation it has to the issues here, what [99] profit L. H. Doolittle, an individual, made.

Mr. Evans: Well, he has testified that the trucks are used interchangeably from one company to the other. I believe it is competent to show the profit or loss on behalf of the other company he operated.

The Court: The objection is sustained.

Q. (By Mr. Evans): Now, referring to the schedule of trucks owned by the Doolittle Trucking Company, is the list attached to that report a cor-

(Testimony of L. H. Doolittle.)

rect list of the trucks that the Doolittle Trucking Company had—owned?

A. Well, that's some of them.

Q. Beg your pardon?

A. That is some of them, yes.

Q. You had more? A. Definitely.

Q. But you did not list them on your report to the State?

A. They were probably listed. I can't tell you that, whether they were or not. But there are a lot more than that.

Q. And, as I understand your testimony, that report is incorrect—as to the number of trucks owned by the Doolittle Trucking Company?

A. This report is. This list is.

Q. That list is wrong? A. Yes.

Q. You have your duplicate copy, your retained copy of that [100] 1945 report? A. Do I?

Q. Yes. A. Not here, no.

Q. Do you have it in your files?

A. I imagine so—yes.

Q. Could you produce it here tomorrow?

A. Yes.

Q. Will you do that? A. Yes.

Mr. Evans: Thank you.

The Court: Step down—is there anything else that you want to ask?

Mr. Seering: No.

The Court: Step down.

(Witness excused.)

The Court: Call your next witness.



Mr. Seering: Mr. Hallam. [101]

S. W. HALLAM

called as witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Seering:

Q. Will you state your name, please?

A. S. W. Hallam.

The Court: S. B.?

The Witness: S. W. Hallam.

Q. Where do you reside?

A. 3854 37th Avenue South.

Q. And where are you employed?

A. National Transfer Company.

Q. Were you ever employed by Foster Transfer Company? A. Yes, sir.

Q. When did you start your employment there?

A. Sometime in July of 1945.

Q. Where had you worked prior to that?

A. I worked for the Army Engineers, Treasury and War Assets.

Q. What was the nature of your employment with the government?

A. With the Army Engineers I was dispatcher and in charge of all material equipment, material handling equipment. At the Treasury and War Assets I was just a messenger.

Q. And what was the nature of your employment

(Testimony of S. W. Hallam.)

and what were your duties with Foster Transfer Company? [102]

A. Mostly as supervisor of this Treasury contract.

Q. And just what did you do in connection with supervising the contract?

A. Well, I contacted all the people of the various agencies and talked to them about procuring under this contract. I did that usually—sometimes in the afternoon when I had a little time. In the mornings I dispatched the trucks and the men to the various jobs and kept the records of the jobs, as jobs and not as to the revenue.

Q. When you say you contacted the various government agencies with regard to procuring under this contract, were they advised by the Treasury Procurement Division that Foster Transfer had this contract, or was that the responsibility of the Foster Transfer Company?

A. I didn't know whose responsibility it was, sir, but I don't think they were advised.

Q. As far as you know, they were not advised?

A. That is right—that is, some of them. I know that some of them were, but there are quite a few that I know that weren't.

Q. Now, outside of contacting the agencies in trying to get them to use the services of your company, what else did you do?

A. I tried to give my personal attention to as many jobs as I possibly could. [103]

(Testimony of S. W. Hallam.)

Q. And can you tell us, what proportion of this work performed under this contract did you, yourself, oversee?

A. Just how do you mean that, Mr. Seering?

Q. How much of the overall work, what percentage would you say, if you can say, did you, yourself, supervise?

A. Well, I dispatched the trucks to all the jobs, and the men, but I didn't personally go out on the job with the men unless it was an extraordinary job. But I personally dispatched the men and the trucks to the various jobs.

Q. And is that customary in the truck transportation business—when a call comes in, is it customary simply to send the workmen out with a truck?

A. Yes, sir.

Q. Ordinarily the supervisor doesn't go with it?

A. No.

Q. Now, were you familiar personally with the work performed by the Foster Transfer Company under the contract here in question.

A. You mean the Wallingford—

Q. No; I mean the overall contract, 156.

A. Yes, I was.

Q. What is the nature of your work now with the National Transfer?

A. Salesman.

Q. And that is what kind of a company? What type of work do [104] they do?

A. General hauling.

Q. The same type as Foster Transfer Company?

(Testimony of S. W. Hallam.)

A. That is right.

Q. How long have you been with them?

A. Just a year.

Q. How does that operation compare in size to Foster Transfer Company?

A. They are considerably larger.

Q. Now, on the basis of your experience with this contract, and since terminating your employment with Foster Transfer Company, what can you tell us with regard to the quality of service which was rendered by Foster Transfer Company under its contract with the Treasury Department, Procurement Division?

A. Well, at that time everybody knows, I guess, that labor was very hard to get, especially competent labor, and I think that Foster Transfer did as well as could be expected with the help they could get.

Q. Now, did their services compare with the services rendered by other companies at that time?

A. At that time they were comparable.

Q. What would you say as to whether the Foster Transfer gave as good a service as it could reasonably give under that contract? [105]

A. Well, I would say there were certain circumstances where we probably could have given better service, but there were also circumstances where we extended ourselves far beyond where it was necessary in order to give good service.

Q. When you say there were certain circum-

(Testimony of S. W. Hallam.)

stances where you could have given better service, can you tell us specifically?

A. I don't know. It is pretty hard to tell specifically—just minor instances.

Q. In other words, is it a usual thing in the truck transportation industry that after the event many complaints arise? Is that correct?

A. Yes.

Q. And at the time had you known about them you could have corrected them?

A. That is right.

Q. Is that what you refer to?

A. Yes. Well, I don't know whether I can make myself clear. In the trucking industry you might have seven or eight jobs going on at one time during the day. Well, obviously you can't send a supervisor out on all seven or eight jobs because there just isn't enough revenue in the industry to warrant it.

Q. Now, where did Foster Transfer Company get its employees? [106]

A. From the Teamsters.

Q. And where does——

A. (Interposing): Sometimes we couldn't get them from the Teamsters and we got them from the Washington State Unemployment Board, I think it is called.

The Court: Keep your voice raised, clear and distinct so we can hear every word you say.

Proceed.

(Testimony of S. W. Hallam.)

Q. (By Mr. Seering): Where does every other trucking company get its employees?

A. The same place.

Q. Now, referring to an incident which has been referred to in the correspondence, particularly the letter of Mr. Ihlanfeldt, Regional Director of the Treasury Department Procurement Division, regarding the transporting of some technical radio equipment, were you familiar with that incident?

A. Yes, sir.

Q. Will you tell us the facts with regard to it?

A. We moved the equipment.

Q. Well, do you recall that there was a question as to a tailgate—lift-gate truck having been requested? A. Yes.

Q. Give us the complete facts as you know them with regard to that instance. [107]

A. I went down originally to talk to this man—I don't remember his name—and he asked me to bring Mr. Doolittle down the next day, which I did. And he asked Mr. Doolittle if we had a lift-gate truck. Although we didn't have one of our own, we did have one that was available for our use. It was owned by another company. And he told this man that, "Yes, we could get a lift-gate truck."

So the following morning he called up and wanted this lift-gate truck, but unfortunately it wasn't available.

Q. Do you know whether Mr. Doolittle, as he



(Testimony of S. W. Hallam.)

stated, talked to a sergeant who informed him that a flat-bed truck could be furnished?

A. That I don't know.

Q. You don't know that. Were you there on the move when the equipment was moved?

A. Yes, sir.

Q. Was it moved satisfactorily?

A. To my knowledge, yes.

Q. Was there any complaint on the manner in which it was handled?

A. No, sir; there was none made to me.

Q. Was there any damage caused?

A. No. In fact, we were commended on the job.

Q. On that particular move? [108]

A. Yes.

Q. By whom?

A. By the man in charge at the receiving end, for the way we put it down. He had it go down in a big bomb shelter and he said that was as nice a piece of maneuvering as he had ever seen.

Q. Are you familiar with the incident of some shelves which have been mentioned here?

A. No, sir; I am not.

Q. Are you familiar with the Wallingford move?

A. Yes, sir.

Q. What is the fact there as to the quality of the performance which the Foster Transfer Company gave under its contract in moving that equipment from the warehouse at Wallingford to its destination which was where? Do you recall?

(Testimony of S. W. Hallam.)

A. Somewhere on 1st Avenue South. I don't recall their correct address.

Q. Tell us particularly with regard to the nature and quality of performance on that job.

A. I originally—I think I talked to Mr. Sbinden originally on that job.

Q. Who was he?

A. Lloyd Sbinden? He was in charge—I think I am right—of that particular warehouse. And he informed me that the Treasury Department was figuring on putting the job [109] up for a bid. And I asked him why we couldn't do it. And he said he didn't know of any reason why we couldn't do it, but they were just figuring on putting it up for bid. And I turned that information over to Mr. Doolittle who in turn turned it over to his attorney.

The Court: You do not speak loud enough, Mr. Hallam. The last three words you used, it is very difficult for anybody to hear them. You must speak out. You do not speak loud enough. Keep your voice raised on every word so we can hear not only one word of a sentence but every word of a sentence.

The Witness: Yes, sir.

The Court: Proceed.

Q. (By Mr. Seering): Now, what was the total time consumed on that move?

A. I couldn't tell you. I don't remember.

Q. Do you have any approximation?

A. I think it was approximately two weeks.

Q. You recall that the government originally

(Testimony of S. W. Hallam.)

estimated that the job should require seven days?

A. No; I originally estimated that.

Q. What occurred to change that time of performance?

A. It was strictly an estimate in the first place. There were three days of very bad weather where Mr. Street and I by mutual agreement suspended all operations. And there [110] was two days that I know of that the elevator was broken down on 1st Avenue South. It might have been more, that I don't know of. I don't mean all day. There were two different days that the elevator was broke down.

Q. What about the facilities for handling the cargo at the warehouse?

A. The facilities for handling at the warehouse—well, they had sufficient boards there. This material was all stock piled in bins and the material had to be taken out of these bins and put on boards and taken to the receiving door where it was loaded on trucks. We had no trouble on that end whatsoever.

Q. Did you have enough equipment and men to handle the job?      A. Yes, sir.

Q. In your contacts with the representatives of the Procurement Division, were any complaints made to you as to the quality of your work?

A. Yes, sir.

Q. What were those, if you recall, specifically?

A. Well, I don't know whether you would call

(Testimony of S. W. Hallam.)

them complaints or comments. I talked with Mr. Street at various times and he told me that certain things weren't going right. And I told him that I would do my best to iron them out, which I did.

Q. Do you recall specifically what those instances were? [111]

A. Well, one of them was this job with the Alaska Communications System. Another one, we had a colonel. We received his merchandise here in Seattle, and under our contract we had to unpack and uncrate this merchandise and put it in his home. We got out there and the colonel's wife had the drivers washing the dishes, hanging pictures upon the walls, laying the carpets, and everything else; and I knew that the government didn't intend to stand that expense, but there was nothing I could do about it.

Q. Well, how did a complaint arise out of that incident?

A. I stopped the men from doing that, and I think the colonel made a complaint through his office to Mr. Street. And we talked that over, and we got a ruling on that, that they wouldn't do that any more, that we were just to deliver the merchandise and unpack it and leave it there and not to hang the pictures and lay the carpets and wash the dishes.

Q. Are those the only instances in which you recall discussing the matter with Mr. Street?

A. I recall the instance of the shelves which was—I don't know this myself, because I wasn't

(Testimony of S. W. Hallam.)

there. Mr. Street was very unhappy with Mr. Doolittle about the method in which he unloaded the shelves.

Q. Now, you mentioned then three instances. The first was the Alaska Communications System, and that is the one [112] you said you were commended on? A. Yes, sir.

Q. And you can't recall any others?

A. No other complaints; no, sir.

Q. You are not personally familiar with the incident of the employee who allegedly attacked a government representative?

A. No, sir; I am not.

Q. You were subpoenaed by the government in this case? A. That is right.

Mr. Seering: You may examine.

#### Cross-Examination

By Mr. Evans:

Q. Mr. Hallam, during the course of this move to the Treasury Department's warehouse, isn't it a fact that Mr. Street complained quite frequently as to the length of time it was taking?

A. No, sir.

Q. Isn't it a fact that he complained quite frequently as to the inefficiency with which the job was being handled?

A. On the other end; not my end.

Q. Isn't it a fact that you were unable to secure adequate and competent help to handle that job?

A. At that time, yes. [113]



(Testimony of S. W. Hallam.)

Q. That is, the help you were receiving was not dependable, was it? A. That's right.

Q. Substantially, the help you were receiving were men from down here on skid-row who had no experience in that type of work, isn't that a fact?

A. Well, we didn't put those men on a job that really required any skill, as you might call it. We put them on just actual labor, that is, putting the stuff into boxes, or bringing the boxes over to the trucks. We didn't put those men on jobs requiring skill.

Q. You do not consider that that requires skill, the proper packing and——

A. There was no proper packing necessary because the stuff was just going down to this warehouse and was taken right out of the boxes again. In fact, there were two government men there supervising that particular end of it, that is, the packing.

Q. And isn't it a fact that most every day you would have a partially different crew on because the same help wouldn't show up the next day?

A. Two or three, yes.

Q. Now, as I understand, you have been offered a job with the Foster Transfer Company, or with the Doolittle Company, one or the other, is that correct? [114] A. Yes, sir.

Q. Have you decided whether or not you are going to take that job? A. No, sir.

Q. You are considering it? A. Yes, sir.



(Testimony of S. W. Hallam.)

Q. Now, isn't it a fact that at the time of the discussion with regards to this gate-lift truck with the Alaska Communications System that you called Mr. Doolittle's hand on that matter after you left there and told him that he shouldn't have told them that he had a gate-lift truck because he didn't?

A. Yes.

Q. And isn't it a fact that in your opinion you should not have tried to move that equipment without a gate-lift truck?

A. No, it is not my opinion that we shouldn't have tried to move it without it. It is my opinion we should have sent the gate-lift when it was requested. The move was competently performed without it, but I said if a man requested it he should have had it.

Q. Isn't it a fact that you were not equipped for that particular move and that you shouldn't have attempted it?

A. With a gate-lift, I would say yes.

Q. Well, I don't believe you understood my question. Isn't [115] it a fact that you were not equipped to make that particular move and that you should not have attempted it?

A. Yes, sir.

Q. Now, as I understand, during the course of this contract the Foster Transfer Company received several verbal and written warnings regarding the poor service which was being given under this contract.

A. That is these letters that have already been—

(Testimony of S. W. Hallam.)

Q. And there were other verbal warnings beside that?      A. Yes, sir.

Q. I will ask you whether or not these were ever brought to the attention of Mr. Doolittle?

A. That I can't remember.

Mr. Evans: May I have this marked for identification, please?

(Statement of Sydney W. Hallam, dated July 21, 1949, marked Defendant's Exhibit A-8 for identification.)

Q. (By Mr. Evans): I hand you what has been marked for identification Defendant's Exhibit 8. I will ask you to state whether or not you know what it is.      A. I do.

Q. I will ask you whether or not it isn't a statement which is signed by you and given to two agents of the Federal Bureau of Investigation? [116]

A. It is.

Q. I will ask you whether or not your initials appear on the first page?      A. They do.

Q. And whether or not your signature appears on the second page?      A. It does.

Q. I will ask you whether or not all the information that is contained therein isn't true?

A. I believe it is.

Q. Now, will you refer to the second page, please, about the middle of that page? I believe you will find a statement to the effect that you received numerous verbal and written complaints from Mr. Street and that these were called to Mr. Doolittle's attention. Do you find that?      A. Yes.

(Testimony of S. W. Hallam.)

Q. Does that refresh your memory any as to whether Mr. Doolittle was informed of these discrepancies?

A. He was informed through the letters; and he had several—several talks with Mr. Street.

Q. What if any action would Mr. Street take—or Mr. Doolittle take when these complaints were received?

A. Well, he would usually tell me to straighten them out.

Q. Well, now, don't you state there in your statement that these were brought to the attention of Mr. Doolittle by me [117] but he never did a thing about them, he just ignored them completely?

A. That is right.

Mr. Evans: I believe I am entitled to offer Exhibit Number 8, Your Honor—A-8.

The Court: Do you mean by that that you do now offer it?

Mr. Evans: I now offer Exhibit A-8.

Mr. Seering: I haven't read it yet, Your Honor.

(Exhibit A-8 presented to Mr. Seering.)

Mr. Seering: I haven't read the entire statement, Your Honor. The witness, however, on each question to which his attention has been directed to a portion of this statement, has said, yes, he made that statement. The statement covers a good deal of other matter and it would be admissible, I presume, to impeach the witness if he denied he ever made such a statement. He hasn't done that. I object on that ground.

(Testimony of S. W. Hallam.)

The Court: Any response?

Mr. Evans: I believe the statement is not entirely in accord with the oral testimony which has been given and I am using this statement and would like to use it for the purpose of impeaching the witness, Your Honor. [118]

The Court: In what detail in respect to which the offered exhibit does tend to have that effect, that is, impeaching him with respect to anything he orally testified?

Mr. Evans: I find it here, the particular paragraph I am referring to. I don't believe the witness stated the same on the witness stand or even to the same effect in regard to this last question. May I ask the reporter to read the last question and answer, please, which was propounded to this witness?

The Court: You may do that.

(The reporter then read back as follows:

Que. What if any action would Mr. Street take—or Mr. Doolittle take when these complaints were received?

Ans. Well, he would usually tell me to straighten them out.

Que. Well, now, don't you state there in your statement that these were brought to the attention of Mr. Doolittle by me but he never did a thing about them, he just ignored them completely?

Ans. That is right.)

Mr. Seering: There is no issue there.

(Testimony of S. W. Hallam.)

The Court: The Court did not get convinced of the admissibility of A-8, but further examination may be [119] indulged in if counsel feels a reasonable effort will make it admissible.

Q. (By Mr. Evans): Now, was there any attempt on the part of the Foster Transfer Company to train their employees to do their job which they were required to do under this contract?

A. Well, sir, in the trucking industry there just isn't training; and, no, sir, no attempt was ever made.

Q. Now, where were a substantial portion of your casual employees recruited from?

A. Where we could recruit them—from the Teamsters Hall we did, and where we couldn't, we recruited them from the United States Unemployment Service.

Q. What general area of the City would those people come from?

A. You mean where did they live?

Q. Well, I believe you state here in your statement "most of your casual labor came from skid-road." Is that correct? Is that true or isn't it?

A. Yes.

Q. What was Mr. Doolittle's attitude toward the employees?

A. Well, him and I were hardly ever around at the same time.

Q. Well, don't you state in your statement that the men we employed never gave me any trouble,

(Testimony of S. W. Hallam.)

however, they didn't like Doolittle. He was too antagonistic towards them. [120] His attitude in general was bad and he didn't know how to talk to his employees—he treated them like dogs. The men took orders from Hank but with a great deal of resentment. On the whole the working conditions at Fosters' was good if you ignored Hank's attitude?

A. That was what I was told; yes, sir.

Q. And that is what you have stated in this statement? A. Yes, sir.

Q. Now, was a fork-lift truck ever procured for use at the Wallingford warehouse in loading the trucks? A. Yes.

Q. Do you recall how that came about?

A. Yes. We thought that it would expedite the loading of these pallets—pallet boards that the merchandise was on onto the trucks, but the ground out there was too wet to use it, so it couldn't be used.

Q. Did anybody make such arrangements to get such a fork-lift truck?

A. Mr. Doolittle, I believe, did.

Q. Where was it procured from?

A. From the Port.

Q. Was it a government truck?

A. Yes, sir.

Q. Who sent after it? A. I did. [121]

Q. How long did it take you?

A. Oh, about two hours.

Q. And isn't it a fact that you state in your statement here that it took you a half a day to get it?



(Testimony of S. W. Hallam.)

A. And bring it back.

Q. Isn't it a fact that it also took you another half day to take it back?

A. No, sir. If I said that, I was wrong. I don't remember the exact time, to tell the truth. It might have taken me half a day to get it. However, there was no charge made to the government for that. That was strictly on my own.

Mr. Evans: I would like to offer this statement at this time again, that is, Number 8 as being inconsistent with the witness' present testimony.

Mr. Seering: The same objection, Your Honor.

The Court: The objection is sustained. Proceed.

Q. (By Mr. Evans): Isn't it a fact that you state in your statement which you gave to the Federal Bureau of Investigation: "It was mutually agreed by Hank and Mr. Street, and my understanding, and I had to go to ACS to get one, which took me a half a day. When we tried this lift truck it could not be used inasmuch as the rain during the day had softened the earth near the loading dock and the lift truck itself was too heavy. I returned the truck, which [122] took me another half day."

A. I don't remember stating the time. Maybe I did. It might have taken that long.

Q. Now, during the time you were gone, there was nobody to supervise the operations at the Wallingford warehouse, were there? A. No, sir.

Q. Now, in your opinion was the Foster Transfer Company doing a good job on this contract?—an efficient job? A. In my opinion, yes.

(Testimony of S. W. Hallam.)

Q. In all respects?

A. No, not in all respects.

Q. Isn't it a fact that this job could have been done a lot better?

A. This particular one you are talking about?

Q. On the whole?

A. At that time I would say no; now it could.

Q. Well, why couldn't it have been done better then?

A. Because at that time you couldn't get the competent help nor the competent—the good equipment that is available now.

Q. Well, as I understand, then, Foster Transfer just didn't have the men or equipment with which to perform this contract in a proper manner, is that correct?      A. Yes. [123]

Q. As I understand, you had had no experience with this particular type of trucking operation at the time you went to work there, is that right?

A. That is correct.

Q. Yet you were put in charge of this particular operation more or less as foreman and supervisor?

A. Yes, sir.

Q. Did you handle any paper work on this contract?      A. I handled some of it, yes.

Q. Was the Foster Transfer Company making any money on the contract?

A. That I couldn't say.

Q. Isn't it a fact that you told an agent of the Federal Bureau of Investigation that you couldn't

(Testimony of S. W. Hallam.)

understand why Mr. Doolittle was pursuing this lawsuit because he was losing money on the contract anyhow?

A. At that time I thought he was, but since then I have heard different. When I made the statement, I thought that.

Q. But at the time you were talking with the Federal Bureau of Investigation, it was your opinion that they weren't making any money on the contract?

A. Yes, sir. I can't say, to my knowledge, whether they were or not because I didn't keep the books.

Q. I will ask you whether or not, in your opinion, the Treasury Department—the officials of the Treasury Department [124] were trying to give the Foster Transfer Company a square deal on this contract?

A. In quite a lot of instances, yes.

Q. There were no personalities, were there?

A. In my opinion, yes.

Q. Isn't it a fact that you stated before that there were no personalities involved so far as you knew?

A. No, sir. If I did, I didn't mean to. I said between myself and anybody.

Q. Was there proper supervision of the work being done under this contract?

A. There was proper supervision as far as it could go around, but we couldn't send a supervisor on every individual job.

(Testimony of S. W. Hallam.)

Q. Isn't it a fact that you stated before that there was a lack of sufficient supervision on this work? A. Yes, sir; for the same reason.

Q. Now, do you recall an incident where your movers in moving a Mr. Reardon's furniture out of an apartment, the Caledonia Apartments—where they apparently slid a large box down four flights of stairs rather than carrying it and damaging the steps? A. I do, sir.

Q. I will ask you whether or not you made a settlement with the owner of that apartment house for the damage? A. I did, sir. [125]

Q. Do you consider that proper and efficient moving?—to slide a box down rather than carry it?

A. I don't consider it efficient moving; no, sir. But I don't think it is too much the fault of the company. That happens every day. That's the men. That is not the company.

Q. Oh, that is the employees and not the company's fault? A. Yes, sir.

Q. You do not consider that the fault of the company? A. No, sir.

Q. How do you distinguish between the company and the employees?

A. Well, legally yes, they are responsible, but technically no. Any transfer company you get today, the same thing could happen and the company would be responsible for the damage.

Q. Well, do you consider that method of moving a large, heavy box from the fourth floor down

(Testimony of S. W. Hallam.)

to the ground floor a proper method of moving that box?—to slide it along the steps?

A. No, sir; I wouldn't.

Q. Isn't it a fact that on occasions the Foster Transfer Company would send flat-bed trucks instead of vans during inclement weather?

A. Yes, sir. [126]

Q. To carry peoples' furniture?

A. Yes, sir.

Mr. Evans: No further questions.

#### Redirect Examination

By Mr. Seering:

Q. Mr. Hallam, on cross-examination counsel asked you if there were any personalities involved and you said yes. Will you explain your answer?

A. What I had in mind when I said that—incidentally, I made that in my statement and I see that it is not in there. I am referring to the shelves that were brought up under discussion before. When those shelves—when the argument came out about those shelves, Mr. Street came out to me and started raving and told me Mr. Doolittle just didn't know anything from anything. That night when I got back to the office, why, Mr. Doolittle said the same thing. And that's how it all started.

Q. To your knowledge, had there been any conflicts before with Mr. Street.

A. To my knowledge, no. It all started over the shelves.

Q. Now, on the matter of this gate-lift, you said

(Testimony of S. W. Hallam.)

you were not equipped with a gate-lift. Is it a fact that one was available—owned by someone else?

A. Yes, sir. [127]

Q. Which you used                      A. Which we used.

Q. And it just happened on this occasion that when you received the call it was not available?

A. That's right.

Q. In regard to the matter of complaints, you said there were no complaints on your end of the Wallingford job?                      A. That's right.

Q. That was the Wallingford end?

A. Yes, sir.

Q. Who was in charge on the other end of the job?

A. Most of the time Mr. Doolittle—Hank—and the rest of the time his father.

Q. Counsel brought out the fact that some of your employees came from the skid-road. Were those the employees that were recruited through the United States Employment Service?

A. Yes, sir.

Q. Was there any other form of recruiting available to you other than the Teamsters Hall and the Employment Service?                      A. Not that I know of.

Q. What was the employment situation at that time in June and July of 1945?

A. Very bad, very bad.

Q. You stated that flat-bed trucks were sent out on occasion [128] during inclement weather. What is the explanation of that?



(Testimony of S. W. Hallam.)

A. Well, we didn't have sufficient vans. But we always sent tarps. We had flat-bed trucks with stakes and side boards, and we put tarps on them. But they were flat-bed trucks.

Q. Was it possible to handle the commodities that you handled without damage thereto by weather?

A. Yes. Previously there was an instance I recall of some material getting damaged by water, but I don't remember that.

Q. You do not recall any such instance?

A. No, sir; I don't.

Mr. Seering: That is all.

#### Recross-Examination

By Mr. Evans:

Q. Now, you stated that you did have a gate-lift truck available?

A. We did not own a gate-lift truck, nor did we have one, but we had one we had been borrowing from another firm.

Q. How do you reconcile that with the following quotation from your signed statement? "I told Hank we shouldn't have told the ACS that we had a lift-gate truck when he knew that we didn't. And he replied that we'd get one. However, the next morning Hank sent a flat bed truck to [129] the ACS office to move the equipment. I believe it was raining that day, but the equipment was covered with canvass. We were not equipped for this particular move and shouldn't have done it."

(Testimony of S. W. Hallam.)

A. In my opinion, Hank gave the man to understand that this gate-lift truck would be available at any time, and at the time we were talking to him I wanted to explain to him that it wasn't ours and would not only be available when not subject to prior use, but that point was never brought out.

Q. Oh! Then as I understand, Mr. Doolittle was representing to this representative of the Alaska Communications System that he owned a truck and would have it available at any time, is that correct? Is that the impression?

A. That was the impression, yes. I don't believe he actually asserted that, but that was the impression.

Q. When, in fact, he would just have to get it whenever the other company wasn't using it, is that correct?

A. That is right.

Mr. Evans: No further question.

The Court: You may step down.

(Witness excused.)

The Court: Call your next witness.

Mr. Seering: So far as I know, I think we are probably ready to rest.

The Court: I wish to proceed at this time. Call your next witness or else rest your case.

Mr. Seering: Plaintiff rests.

The Court: The defendant may now proceed.

Mr. Evans: At this time the defendant moves for dismissal, Your Honor. There has been ample showing by the plaintiff's own witnesses that the

plaintiff did not fully and faithfully perform all things required of it under the provisions of the contract.

Now, that is one of the allegations set out in the complaint.

I believe it has been testified to here by both witnesses that the contract was not fully and faithfully performed. That is one of the allegations here and I don't think it has been proven.

I believe that the plaintiff's action should be dismissed at this time for want of sufficient proof.

The Court: The motion is denied.

Proceed.

Mr. Evans: Now, I would like to make just a brief opening statement.

The Court: You may do that.

(Opening statement by counsel for defendant.)

The Court: Call the Government's first witness.

Mr. Evans: I would like to call Mr. MacInnes.

### MALCOLM C. MacINNES

called as a witness by and on behalf of the defendant, having been first duly sworn, was examined and testified as follows:

#### Direct Examination

By Mr. Evans:

Q. Will you state your full name, please?

A. Malcolm C. MacInnes.

Q. Where do you live, Mr. MacInnes?

(Testimony of Malcolm C. MacInnes.)

A. 1416 East 41st.

Q. Will you speak up so we can all hear you?

A. 1416 East 41st.

Q. And is that a private residence or apartment house?      A. It is an apartment house.

Q. I will ask you where you are employed.

A. At 1461 East 41st, Seattle.

Q. And in what capacity?

A. Manager of the apartment house.

Q. How long have you been so employed?

A. Well, pretty near seven years at that building.

Q. I will ask you whether or not you recall the time when Mr. Reardon moved out of your apartment back in 1945?

A. Well, I can't recall the very day, but I recall him moving [132] out.

Q. Do you recall what floor his apartment was on?      A. Yes, sir.

Q. What floor?      A. On the third floor.

Q. Now, I will ask you whether or not you were present at the time his furniture and belongings were moved out of that apartment?

A. Yes, sir; I was present. I was around the apartment at that time.

Q. I will ask you whether or not, as a result of that move, any damage was done to the apartment house?      A. Well, yes.

Q. What damage was done?

A. They moved some stuff down the back steps that they didn't carry. They just drug it over the

(Testimony of Malcolm C. MacInnes.)

steps and tore the corners off the steps on the way down.

Q. How many flights down was it?

A. That would be three flights.

Q. Three flights. I will ask you whether or not in the course of your employment as manager of an apartment house you have observed other transfer companies in performing their functions as movers?

A. Yes.

Q. I will ask you whether or not you have observed the [133] methods used by other transfer companies in carrying or moving boxes and furniture, and so forth, in and out of apartment houses?

A. Yes.

Q. Now, from that observation will you state whether or not in your opinion the movement of the articles out of Mr. Reardon's apartment, in the manner you have just described, was in keeping with the common practice of other carriers?

A. No, sir.

Mr. Seering: Objected to. There is not a sufficient foundation for this witness to testify as an expert.

The Court: Overruled. The answer was "no", and it will stand.

Mr. Evans: No further questions.

Mr. Seering: No questions.

The Court: Step down.

(Witness excused.)

The Court: Call your next witness.

Mr. Evans: I would like to call Mr. Schwandt.

May I ask that Mr. MacInnes be permanently excused? I do not expect to call him again.

The Court: You may be excused, Mr. MacInnes.

HERMAN F. SCHWANDT

called as a witness by and on behalf of the Defendant, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Evans:

Q. Will you state your full name? And spell the last name, particularly for the purpose of the record.

A. Herman F. Schwandt, S-c-h-w-a-n-d-t.

Q. Are you now employed, Mr. Schwandt?

A. No, I am not.

Q. What is your status?

A. I am a retired civil service employee.

Q. And with what branch of the Government were you employed?

A. I was last employed by the United States Immigration Service.

Q. And how long were you employed by the Government?

A. From August 15, 1924, to July—June 30, 1948.

Q. Now, I will ask you whether or not you were stationed in Seattle during the fall of 1945?

A. I was.



(Testimony of Herman F. Schwandt.)

Q. And what was your position at that time?

A. I was the chief of Detention, Deportation and Parole Section in the Immigration and Naturalization Service.

Q. Now, in that connection I will ask you whether or not you [135] had any duties or function with regard to Japanese aliens which might be shipped into this city for repatriation to Japan?

A. I was in charge of all the moves. I handled all of them.

Q. Now, I will ask you whether, in connection with such a move, you made any request to the Foster Transfer Company for any type of transportation along about October or November of 1945?

A. Yes. I called on them for—to furnish two trucks, and I believe it was—I called them on October 31, 1945, and with the provision that I would furnish them with the exact time later.

Q. And how many trucks did you call for?

A. Two.

Q. And I will ask you whether or not you called for any additional helpers to be along with the trucks?

A. I called for helpers for each of the trucks as well as the drivers.

Q. That would make two trucks, each with a helper?      A. That's right.

Q. Now, I will ask you whether or not you later notified the Foster Transfer Company as to the time and place where you would want these vehicles?

(Testimony of Herman F. Schwandt.)

A. I did.

Q. And do you recall when you so notified them?

A. I believe it was on the morning of November 2nd; however, I am not sure. It might have been the day before.

Q. And where did you direct them to report?

A. At the baggage room gate at the Union Station on 5th Avenue South.

Q. And I will ask you to state, what was the purpose in ordering these trucks?

A. To handle the hand baggage of a shipment of 320 Japanese that were coming in that day by special train.

Q. I will ask you whether or not it was necessary to keep these Japanese aliens under guard?

A. Definitely.

Q. I will ask you whether or not you were responsible for the supervision of that security?

A. I was.

Q. I will ask you whether or not you made your plans accordingly as to the amount of security which you would have available?

A. I made my plans in accordance with the number of trucks and busses and other equipment that was ordered.

Q. And I will ask you whether or not the trucks showed up?      A. Yes, the trucks were there.

Q. I will ask you whether or not the helpers were there?      A. No. There were no helpers.

Q. Now, as a result of there being no helpers,

(Testimony of Herman F. Schwandt.)

I will ask you [137] what, if anything different, that made in your plans for the movement of these Japanese aliens?

A. These Japanese aliens were carrying their hand baggage, and in order to expedite the movement, I had the Japanese place their hand baggage on the tailgate of the truck. This jeopardized the security to some extent inasmuch as we had to move them first right and then back left.

Q. I will ask you whether or not there was very much other traffic around the depot at that time?

A. At 10:30 and 11:00 o'clock in the forenoon on 5th Avenue South it is just one continual stream of traffic.

Q. I will ask you, what were your plans as to the movement of these Japanese aliens when you set up the move and ordered your guards and trucks?

A. To transfer them to the Immigration Station together with their luggage.

Q. And I will ask you what difference, if any, it made to your plans, the fact that the helpers did not arrive?

A. Well, it jeopardized the security and delayed the loading of the Japanese to the——

Q. What were you going to do with them if the helpers had been there?

A. Merely set the baggage on the edge of the curb and move them right on in to the trucks—into the busses, pardon me. [138]

Q. But as a result of the helpers not being there,

(Testimony of Herman F. Schwandt.)

what additional movements did you have to make with these people?

A. We had to move them first to the right of the door, to place their baggage on the tail gate where the two drivers then took the baggage and moved it forward into the truck, and then I had to move them from there, oh, approximately sixty or seventy-five feet to the left to get them into the busses.

Q. I will ask you whether or not such additional movement increased the hazard of any of them being able to escape?

A. Very definitely, because that left me short handed.

Q. I will ask you whether or not the absence of helpers increased the length of time that you had to use the trucks?

A. In the case of one of them, it probably didn't. I think one of those trucks was released in an hour and a half; the other one, why, it was over three hours, or about three hours, as I recall it, before it was released, because of not having sufficient help to get the baggage unloaded.

Q. Now, I will ask you whether or not you reported these facts which you have testified to to Mr. Steele?

A. I did.

Q. And Mr. Steele is who? [139]

A. He was chief of the Fiscal Section at the immigration station.

Q. I will ask you whether or not you submitted

(Testimony of Herman F. Schwandt.)

memoranda to him in regard to this transaction?

A. I submitted a memorandum to him when I phoned the transfer company, as to what I had done, that I had phoned them. He then issued a purchase order covering the equipment and the men.

Mr. Evans: You may cross-examine.

### Cross-Examination

By Mr. Seering:

Q. Are you sure it was the Foster Transfer Company that was involved?

A. It was the Foster Transfer Company involved. I don't know who sent the trucks.

Q. You say it was the Foster Transfer Company that you phoned?

A. Yes, because I was advised that they held the contract.

Q. You said that had the helpers been there you would simply have set the baggage on the curb and moved the men into the busses?

A. That is correct.

Q. What was to prevent you doing it anyway without the helpers? [140]

A. Because I didn't have sufficient men there to guard the baggage.

Q. Well, how far was the curb from where the trucks were?

A. Oh, they were parked right up to the curb. However, they were down the street from the door. And the busses were the other way.

Q. In other words, the trucks were right there

(Testimony of Herman F. Schwandt.)

and the baggage could have been piled on the sidewalk by the trucks?

A. Not necessarily. The trucks were ahead of the busses, and it was necessary first to have the Japanese move to the right of the door to deliver their baggage and then move them back two truck lengths, or a truck length and a bus to get them onto the bus.

Q. Anyway, the only question involved, had there been helpers there you would have left no one to guard the baggage?

A. Had there been helpers there, it shouldn't have been necessary to guard the baggage. They——

Q. Your answer, then, is "no"?

A. Not necessarily. That is something—that contingency didn't come up.

Q. My question is: Had there been helpers there, you would have left no guards to guard the baggage?

A. No. It wouldn't be necessary. They have it loaded.

Q. It was just a question of two helpers in guarding that [141] baggage that was involved in this situation and you say that affected the security, is that right? A. That is right.

Q. The drivers were there and in plain sight of the baggage at all times, were they not?

A. They were there. I wouldn't say that they were in sight—that they would be in plain sight of the baggage at all times.



(Testimony of Herman F. Schwandt.)

Q. Well, they were as much so as if there had been helpers there?      A. No, I don't think so.

Mr. Seering: That is all.

Mr. Evans: No further questions.

The Court: Step down.

(Witness excused.)

The Court: At this time we will take an adjournment until tomorrow morning at 10:00 o'clock.

(At 4:30 o'clock p.m., Tuesday, August 2, 1949, the above entitled matter and proceedings was adjourned to 10:00 o'clock a.m., Wednesday, August 3, 1949.) [141]

Seattle, Washington, August 3, 1949

10:00 o'clock a.m.

(All parties present as before.)

The Court: Are there any other ex parte matters or matters upon agreement to come before the Court? If not, you may resume the trial of the case, Mr. Evans.

Mr. Evans: I would like to call Mr. Steele.

The Court: Come forward.

Mr. Evans: Take the stand, Mr. Steele.

RAY S. STEELE

called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

(Testimony of Ray S. Steele.)

Direct Examination

By Mr. Evans:

Q. Will you state your full name, please, and spell your last name for the reporter?

A. Ray S. Steele, S-t-e-e-l-e.

Q. Where are you employed, Mr. Steele?

A. In the United States Immigration and Naturalization Service.

Q. How long have you been so employed by that department of [142] the Government?

A. Approximately 18 years.

Q. I will ask you where you were stationed during November of 1945?

A. At Seattle.

Q. And what was your position at that time?

A. Chief of Fiscal Services and Supply Section, the District Office.

Q. And I will ask you what your position is at this time?

A. The same.

Q. Now, I will ask you whether or not you recall the incident which Mr. Schwandt testified to yesterday in regards to a train load of Japanese aliens coming into Seattle and two trucks being ordered?

A. I do.

Q. And I will ask you whether or not you submitted a purchase order to the Foster Transfer Company for those services?

A. I did.

Q. I will ask you if you recall the amount of the purchase order, or the approximate amount?

A. Originally about \$24.00.

Q. You say originally about \$24. Was there

(Testimony of Ray S. Steele.)

some other purchase order or some change in that figure?

A. It was diminished by reason of the fact that the helpers ordered were not furnished. [143]

Q. How much was it diminished? A. \$28.

Q. How much was the invoice you received from the Foster Transfer Company, approximately?

A. Approximately \$95.

Q. I will ask you whether or not you made any calls on the telephone in regard to that account to the Foster Transfer Company? A. I did.

Q. I will ask you to state whether or not you gained any satisfaction over the telephone.

A. None.

Q. I will ask you whether or not you ever made a trip to their office? A. I did.

Q. I will ask you whether or not you discussed this matter with the person in charge there?

A. I did.

Q. Do you recall who it was you talked to?

A. I talked to two or three people in the office, but the time was too long ago to be definitely sure. I have had no business connection since.

Q. I will ask you what, if anything, was told to you by the persons in charge of that office with regard to the discrepancy to which you were calling their attention?

A. I do not remember the exact words. But I—the gist of [144] it was that I was informed that it was none of my business how the bill was applied

(Testimony of Ray S. Steele.)

or how the charge was made; that having made—furnished the purchase order, that that was as far as my responsibility went; that it was not necessary for me to be concerned with how the company made the charge to the government.

The Court: Can you give the words that were stated by which you got that impression?

The Witness: "It is no skin off of your nose," or some such matter as that. In general effect, that was the impression I received, that it was no skin off of my nose how the charge was made and why should I be concerned in the amount that was charged or how it was charged.

The Court: You say you do not know who used those words?

The Witness: It was the individual who was responsible for the making of the charge, but what the individual's name was I do not know. I had been referred to the individual who was responsible for determining the charge.

Q. (By Mr. Evans): This took place in whose offices?

A. In the office of the Foster Transfer Company on East Pine Street.

Q. Now, the funds for paying this charge were Government [145] funds?

A. The appropriation of the Immigration and Naturalization Service for the current year.

Q. I will ask you whether or not in your capacity it is your duty to watch over those funds and see to

(Testimony of Ray S. Steele.)

it that they are spent judicially and in the proper manner?

A. That is true, and to secure administrative approval of the voucher and payment.

Q. I will ask you whether or not in making the call to the Foster Transfer Company, which you have just mentioned, you were carrying out those functions and duties? A. Yes, sir.

Q. Now, do you recall approximately how many hours these two trucks were used?

A. I have a copy of the purchase order in my pocket which will give the exact information, but I do not recall.

Q. Is that purchase order a part of your files, kept in your regular, usual course of business?

A. Yes, sir.

Q. I will ask you whether or not that purchase order was prepared by you or under your supervision?

A. It was prepared under my supervision and signed by myself.

Q. Refreshing your memory from that document, can you give us the information as to how long the trucks were used [146] or the approximate time?

A. One truck was used one hour and a half and one truck was used three hours.

Q. It makes a total of four and one-half hours—

A. Yes, sir.

Q. —that the trucks were used?

And how much was the bill that they submitted

(Testimony of Ray S. Steele.)

to your company?           A. \$95.25.

Mr. Evans: You may cross-examine.

**Cross-Examination**

By Mr. Seering:

Q. May I see the documents which you have?

The Court: Counsel may look at those. Have they been marked for identification?

Mr. Evans: No. I have no objection to their being marked for identification if counsel so desires.

The Court: Does counsel so desire?

Mr. Seering: I don't know what they are.

The Court: Let counsel making the request first see them, and after that——

Mr. Seering: I don't care whether they are marked. I have no objection to them, if you want to mark them.

Mr. Evans: It is all in the oral testimony. [147]

The Court: If it is all in the oral testimony, unless one side or the other insists upon it, leave the matter as it now stands.

Q. (By Mr. Seering): Now, as I understand it, Mr. Steele, you drew your purchase order on the basis of a time rate?           A. That is right, sir.

Q. And the bill of the Foster Transfer Company was drawn on the basis of a piece rate in accordance with the provisions of the contract; isn't that correct?           A. That was their statement; yes, sir.

Q. And you checked up and found out it was true, didn't you? The contract provided for a rate of so much per piece as it was billed to you?



(Testimony of Ray S. Steele.)

A. There was such a provision in the contract, but the order was not placed in that manner.

Q. Well, under the contract the time rate had no application to this job, did it?

Mr. Evans: Well, I am going to object. This is argumentative.

Mr. Seering: If he is——

Mr. Evans: And the contract speaks for itself as to what the rates are.

The Court: The objection is overruled.

A. It was my understanding that the time rate definitely applied as we had no indication of—of the number of [148] pieces or anything else that was to be moved, or where they were actually to be moved at the time the order was placed.

Q. And you paid the bill as rendered, didn't you?

A. No, sir.

Q. And you wouldn't pay it, of course, if it were not correct? A. We declined to approve it.

Q. Well, if it was paid, presumably it was paid because it was correct.

A. I would presume so.

Q. And if our records say it was paid, would you say they were wrong?

A. Well, that would not be for me to say, sir.

Q. You do not know personally whether it was or wasn't paid, do you? A. No, sir.

Q. Then you want to take back your statement that it was not paid? You don't know?

A. I do not know whether it was paid. I simply

(Testimony of Ray S. Steele.)

know that our office refused to add administrative approval.

Mr. Seering: That is all.

The Court: Anything further?

Redirect Examination

By Mr. Evans:

A. I will ask you whether or not the order was placed for [149] these vehicles to be used for a period of time or whether the order was placed to haul specific items?

A. The order was placed for the use of one 6-ton vehicle and one 5-ton vehicle to be at a certain place at a certain time—to be used by our office until released—a time basis.

Mr. Evans: No further questions.

The Court: Anything further?

Mr. Seering: That is all.

The Court: Step down.

(Witness excused.)

The Court: Call your next witness.

Mr. Evans: I call Mr. Smith.

IRVING D. SMITH

called as a witness by and on behalf of the defendant, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Evans:

Q. Will you state your full name, please, and spell your last name for the reporter?

(Testimony of Irving D. Smith.)

A. My name is Irving D. Smith, S-m-i-t-h. [150]

Q. Where do you live, Mr. Smith?

A. I live on Mercer Island.

Q. And where are you presently employed?

A. With the Civil Aeronautics Administration.

Q. I will ask you whether or not you have ever been employed by the Department of Commerce, Office of Surplus Property? A. I have.

Q. I will ask you whether or not you were so employed on or about August 23, 1945?

A. I was.

Q. I will ask you whether or not at or about that time you had occasion to write a letter to the Procurement Division of the Treasury Department reporting a complaint in regard to services of the Foster Transfer Company? A. I did.

Mr. Evans: May I have this marked for identification, please.

(Letter from Department of Commerce, Office of Surplus Property, Seattle, Washington, to Mr. Chas. Street, Acting Chief, P&S Division, 8th & Lenora, Seattle, Washington, marked Defendant's Exhibit A-9 for identification.)

Q. (By Mr. Evans): You have been handed what has been marked for identification as Exhibit A-9. Will you state whether or not that is the original of the letter which [151] you just spoke of as having sent? A. That is the original.

Q. I will ask you whether or not at the time that

(Testimony of Irving D. Smith.)

you prepared that letter the statements set out in there were fresh in your memory?

A. They were.

Q. Now, in regard to the subject matter of that letter, particularly as to a move which your office contemplated moving on or about the 20th day of August, 1945, do you now personally recall that move?

A. Yes, I do.

Q. Now, will you state the day and time when it was originally planned that that move should take place?

A. The statement in the letter is correct, that the——

Q. Now, you can refresh your memory from the letter, but just tell us what the facts were.

A. All right. The facts were that the trucks—the truck and the equipment were ordered to be at the office from which the move was to be made at 8:30 in the morning of August 20th.

Q. And that was at what location?

A. That was at 2005 5th Avenue.

Q. What building is there; do you recall?

A. I don't think the building has a name. It is a five or six story building now occupied by the telephone company. [152]

Q. Where was it to be moved?

A. It was part of our office. We were occupying the entire building and part of the office was being moved over to the Textile Tower.

Q. Now, I will ask you whether or not any difficulty was encountered in getting a date upon which

(Testimony of Irving D. Smith.)

the Foster Transfer Company would furnish the equipment to make this move?

A. Originally?

Q. Yes.

A. No. The agreement was that they would be there at 8:30 in the morning.

Q. I will ask you whether or not on August 20, 1945, the Foster Transfer Company arrived at your office at 8:30 for the purpose of making this move?      A. No.

Q. What time did they arrive?

A. About 2:30—in the afternoon.

Q. In the afternoon. That was on what date, again?      A. That was August the 20th.

Q. In 1945?      A. Right.

Q. Now, I will ask you whether or not, when the truck did arrive, it had the necessary equipment to perform the move? [153]      A. No.

Q. What, if anything, was lacking,—to your knowledge?

A. We had ordered boxes to pack loose materials in that were to be moved with the desks and furniture and there were no boxes when the truck arrived—nothing to pack loose material in.

Q. And I will ask you what, if any, arrangements were then made for the move?

A. The arrangements then were made that they would be back the following morning with the boxes.

Q. At what time?      A. 8:30.

(Testimony of Irving D. Smith.)

Q. That would be on what date and what year?

A. That would be on the 21st of August that they were to come back.

Q. 1945? A. The following day. 1945.

Q. And I will ask you whether or not on the 21st of August they arrived?

A. They arrived at 9:30,—an hour late.

Q. An hour late? A. An hour late.

Q. I will ask you whether or not they had the necessary equipment at that time?

A. They had the equipment. [154]

Q. I will ask you whether or not they brought the boxes? A. The boxes, yes, and the truck.

Q. And I will ask you whether or not the move was made on that day?

A. The move was made.

Q. I will ask you whether or not you had occasion to observe the workmen of the Transfer Company in making that move?

A. It was where I could see the move being made; yes.

Q. I will ask you whether or not you took any particular notice of the efficiency with which that move was conducted?

A. Well, in my opinion, it was a very slow move. It took more time than seemed to be necessary.

Q. In what regard? Will you explain what you mean?

A. The move was being made from 2005 5th



(Testimony of Irving D. Smith.)

Avenue to the Textile Tower, about five or six blocks away. It took from 9:30 in the morning until 2:30 in the afternoon to move eight desks, three chairs and three filing cabinets.

The Court: From 9:30 to when?

The Witness: Until 2:30 in the afternoon. The move was completed at 2:30.

The Court: They moved what?

The Witness: Eight desks and chair—eight desks, eight chairs and three filing cabinets, plus some loose odds and ends in boxes. [155]

Q. I will ask you whether or not it was a full truck load of furniture?

A. Approximately filled the truck which they had.

Q. I will ask you whether or not from your observation there was any wasted time on behalf of the employees of the Foster Transfer Company?

A. It appeared to me that there was a good deal of standing around.

Q. Now, I will ask you whether or not the delay on the 20th of August, not arriving until 2:30, caused any inconvenience or any loss to the government, particularly as to the time of the employees of the government?

A. It is always a loss to the government when there is that sort of a situation because employees cannot work at their desks when they have made plans to move; in other words, their working materials are put away. They are either packed or

(Testimony of Irving D. Smith.)

stacked or put in a desk, or something, and the result is that they can't carry on their work while waiting for trucks or while the furniture is being moved.

Q. I will ask you whether or not this was an operating office, or was this just an office where there was just the desks?

A. This was an operating office. All our offices were operating offices. I do not recall at this time what particular function was being performed, or what particular [156] part of the organization was being moved. But all of the work that was being performed was about—was of an operational nature.

Q. Now, I will ask you whether or not Exhibit A-9 is the formal complaint which you rendered in regard to the matters to which you just testified?

A. It is.

Mr. Evans: We will offer Exhibit A-9.

Mr. Seering: The plaintiff has no objection.

The Court: Admitted.

(The letter heretofore marked as Defendant's Exhibit No. A-9 for identification was received in evidence.)

Mr. Evans: I have no further questions.

The Court: You may cross-examine.

#### Cross-Examination

By Mr. Seering:

Q. Mr. Smith, what experience in moving have

(Testimony of Irving D. Smith.)

you had which would qualify you to say that the time consumed, from 8:30 to 2:30, to move eight desks, eight chairs and three filing cabinets, plus the contents, packing them and so on, was too long?

A. I have had approximately 15 years of Federal Government experience, all of which has been in the nature of an [157] administrative capacity. At certain times I have been in complete administrative charge of large government offices. The government is always on the move due to the increase or decrease of appropriations. There is always expansion or contraction going on, and I think probably the government moves more than any other type of business. Every few months there is a move where trucks are employed.

Q. And on every one of those moves you, of course, timed them and determined whether it was too long or whether it was proper as to the time consumed?

A. No, sir; but the thing falls into a pattern after a certain number of years.

Q. All right. Now, on this particular job it was necessary to use the passenger elevator, wasn't it?

A. That is right.

Q. And that could accommodate only one desk at a time? A. Perhaps. I don't recall.

Q. You don't know that?

A. I don't know that.

Q. And it wasn't—

(Testimony of Irving D. Smith.)

A. May I correct that statement? I am sure that we could carry more than one desk at a *time*. One desk might only fit into the elevator, but they certainly could be stacked two high. [158]

Q. You are not sure of that, are you?

A. I am sure of that.

Q. You are sure they could be stacked two high?

A. I am sure they could be stacked two high.

Q. That, of course, would increase the danger of damaging them? A. Not in my opinion.

Q. And that passenger elevator was not continuously available, was it? You had to keep the flow of passengers in the building going, too, at the same time? A. That is correct.

Q. So that would be a factor in determining the length of time used in the move, wouldn't it?

A. Not particularly, because the passengers in the building were largely employees who go to work at eight o'clock in the morning, for example, and are through at twelve, and during the hours in between the elevator was not busy.

Q. Well, what I am asking is whether or not the elevator was used also to accommodate the passengers? A. I said that it was.

Q. It was? A. Yes, sir.

Q. So that it was necessary to accommodate the freight move to the simultaneous use of the elevator for passengers as well? [159]

A. That is right.

Q. And that was a factor determining the length of the move? A. That is right.

(Testimony of Irving D. Smith.)

Q. Now, it is not an obligation under this contract for the contractor to furnish boxes in which to pack the contents of desks, is it? Or do you know?

Mr. Evans: I am going to object to that question. I think the contract speaks for itself.

The Court: The objection is overruled.

A. I don't know. All I know is: Boxes were ordered and agreed to be delivered.

Q. They were agreed to be delivered on the 2nd day as a special accommodation to you, is that correct? A. No, sir.

Q. They didn't have them the first day?

A. That is right.

Q. And they informed you it is not customary for the drayer or trucker to furnish those?

A. No, I don't recall any such thing.

Q. You do not recall that? A. No, sir.

Q. And they were furnished the 2nd day?

A. That is right.

Q. Now, did you write this letter at Mr. Street's solicitation?

A. I don't know. I have no recollection of the circumstances. [160] That's four years ago and I don't recall the circumstances.

Q. He had talked to you, had he, about the services of Foster Transfer?

A. I had talked to him.

Q. You had talked to him? A. Yes.

Q. And you do not remember whether he solicited the letter or not?

(Testimony of Irving D. Smith.)

A. No, sir; I don't remember.

Mr. Seering: That is all.

Redirect Examination

By Mr. Evans:

Q. The Textile Tower, does that have a freight elevator?

A. I believe it does, or a service elevator. I wouldn't be sure of that.

Q. So as to the move into the Textile Tower, there would be no tie-up on elevators there?

A. There shouldn't be.

Q. Do you recall whether or not that freight elevator is a large one?

A. In the Textile Tower?

Q. Yes.

A. I am sorry, I don't recall that Textile Tower elevator. [161]

Mr. Evans: No further questions.

Recross-Examination

By Mr. Seering:

Q. Do you remember whether there were facilities for one or more trucks at a time at the elevator? A. Which elevator?

Q. Well, whatever elevator you used.

A. You mean at 2005 5th Avenue?

Q. You are the one who was there.

A. I don't know which building you have reference to. You mean 2005?

Q. The Textile Tower.



(Testimony of Irving D. Smith.)

A. I do not know anything about the Textile Tower. I wasn't at that end of it.

Q. So then you are testifying as to what you considered the proper length of the job and you now tell me you weren't at the other end. You know nothing of the difficulties encountered there at all?

A. That is correct.

Mr. Seering: That is all.

Mr. Evans: No further questions.

The Court: Step down.

(Witness excused.)

The Court: Call your next witness. [162]

Mr. Evans: I call Mr. Hatfield.

### RUSSELL C. HATFIELD

called as a witness by and on behalf of the defendant, having been first duly sworn, was examined and testified as follows:

#### Direct Examination

By Mr. Evans:

Q. Will you state your full name, please? And spell your last name for the reporter.

A. Russell C. Hatfield, H-a-t-f-i-e-l-d.

Q. And where are you employed, Mr. Hatfield?

A. Veterans Administration.

Q. Where were you employed during December of 1945, and January of 1946?

A. With the Treasury Department, Procurement Division.

(Testimony of Russell C. Hatfield.)

Q. In what capacity?

A. As a warehouseman.

Q. And I will ask you whether or not you recall the move which was made by the Procurement Division from their warehouses up here on 8th Avenue and Wallingford down here to South 1st?

A. I do.

Q. And I will ask you whether or not you had any duties with regard to that move? [163]

A. I did.

Q. I will ask you whether or not at any time you had any duties at 8th and Lenora where one of the warehouses was located from which a move was being made?

A. I did.

Q. I will ask you to state just briefly: What was the nature of your duties at that point?

A. My duties were to supervise or see that the stock or the merchandise was moved in the proper numerical sequence from 8th and Lenora to the warehouse at 1st Avenue South. It has to be moved in the numerical manner so it can be restacked or restored in the same manner.

Q. I will ask you whether or not that is for the purpose of keeping your inventory straight so that you could find something after the move was over?

A. That is right; it is.

Q. Now, I will ask you whether or not the Foster Transfer Company had any employees at that location at 8th and Lenora?

A. They did.

(Testimony of Russell C. Hatfield.)

Q. I will ask you whether or not you had occasion to observe these employees while they were working?      A. Yes.

Q. I will ask you whether or not you observed any of the employees who appeared to you to have been drinking? [164]      A. Yes.

Q. I will ask you what observations you made that caused you to arrive at that conclusion?

A. Well, there was one in particular that I noticed was drunk on the job.

Q. What were his actions? What did you see or hear or smell that would give you that impression?

A. Well, just the natural observation of the man being drunk. He was arrogant, conceited and a braggard.

Q. I will ask you whether or not you had occasion to smell his breath?

A. I don't recall, but it wasn't necessary in this case.

Q. Now, I will ask you whether or not this particular individual whom you say was drunk did his share of the work during that day?

A. No.

Q. And I will ask you whether or not at the end of the day you were requested by some employee of the Foster Transfer Company to sign the time card?      A. I was.

Q. And I will ask you whether or not you agreed to sign the time card?      A. I did not.

(Testimony of Russell C. Hatfield.)

Q. I will ask you whether or not you stated at that time to the employee of the Foster Transfer Company the reason [165] why you would not sign the time card?

A. I wouldn't sign for the man who was drunk.

The Court: He asked you if you stated your reason, and your answer should be yes or no.

A. Yes.

Q. Now, will you state what you told that employee of the Foster Transfer Company?

A. I stated that I would not sign for the time of an employee who was drunk.

Q. I will ask you whether or not the employee who was drunk overheard that conversation?

A. Yes.

Q. And what, if any, action did that particular employee who was drunk take at that time?

A. Well, he hit me.

Q. And where did he hit you?

A. On the left shoulder blade.

Q. I will ask you whether or not any of the other employees for the Foster Transfer Company took any action to stop the altercation?

A. Yes.

Q. I will ask you whether or not you had asked this particular employee to sweep the floor?

A. I don't recall any such request.

Q. And I will ask you whether or not during the course of the [166] day there was an even flow of work for the Foster Transfer Company employees?

A. No.

(Testimony of Russell C. Hatfield.)

Q. What occasioned that uneven flow of traffic?

A. Due to the trucks not being there at all times.

Q. Now, were these employees who were there, were they loading or were they truck drivers, or just what were they?

A. Well, there was a truck driver and several employees,—I don't recall how many. But when the truck would come in, why, they would load it.

Q. And would there be another truck waiting when that one was loaded?

A. Yes,—sometimes; not at all times.

Q. What would happen when there were no trucks there?

A. Well, the men would have an opportunity to go out of the building or stand around or stand by.

Q. I will ask you whether or not there was any time lost in that regard?      A. Not a great deal.

Q. I will ask you whether or not there was anybody from the Foster Transfer Company supervising the employees of the Foster Transfer Company at that location?

A. Well, I presume there must have been some sort of a supervisor there. There were other men who had supervisor capacity and who were in and out during the day. [167]

Q. I will ask you whether or not any of the supervisors of the Foster Transfer Company at any time during the day took any action with regard to this one man whom you say was drunk?

A. No.

(Testimony of Russell C. Hatfield.)

Mr. Evans: You may cross-examine.

Cross-Examination

By Mr. Seering:

Q. You were with the shipping or receiving end on this move?

A. Well, in this case it was the shipping end.

Q. The shipping end. And you just testified that there weren't always trucks available so that the men did have time. Now, that of course depends on problems encountered on the receiving end, does it not?

A. Yes.

Q. The speed with which they can unload?

A. Yes.

Q. You, yourself, are not qualified to testify as to what was encountered there on the move?

A. That's right.

Q. And if the trucks were all bunched up at one end, that, of course, would cause a bottle-neck on the job, too?

A. Yes.

Q. And it is ordinarily true that you can't regulate them [168] exactly so that there is one at each end at all times, isn't that right?

A. That is right.

Mr. Seering: Well, I am going to object to this line of testimony. I do not believe that this man is qualified to testify as to a trucking operation.

The Court: Objection overruled.

Q. (By Mr. Seering): Now, on this incident with this employee, do you recall that Mr. L. H. Doolittle called the representative of the Teamsters



(Testimony of Russell C. Hatfield.)

union down there and that he was there, Mr. Al Crowder was there at the time this altercation took place?

A. He wasn't there at the time it took place. He was there afterward.

Q. How long after?

A. Well, I have no idea of the length of time.

Q. Approximately.

A. Oh, an hour, approximately,—half an hour.

Q. Anyway, they did do something about it almost immediately? A. Well, yes.

Q. And the man was discharged, wasn't he?

A. I don't know.

Q. You did not see him around there any more?

A. Well, it was late in the evening, so naturally my time [169] was up.

Q. Well, was he there the next day?

A. No, he was not.

Mr. Seering: That is all.

Mr. Evans: No further questions.

(Witness excused.)

Mr. Evans: I would like to ask if Mr. Hatfield, Mr. Smith, Mr. Steele and Mr. Schwandt can be permanently excused. I do not expect to have to call them again.

Mr. Seering: No objection.

The Court: It is so ordered. The request is granted.

The court will be at recess for 10 minutes.

(Whereupon, a 10-minute recess was taken.)

The Court: I would like to ask counsel if they think we can finish this trial by noon?

Mr. Evans: I am confident that we cannot, Your Honor. I have four or five more witnesses.

The Court: I will request that counsel on both sides be brief in the scope of their examination. I have no objection to your calling that number of witnesses, but be direct and to the point and avoid the use of a plural question where one may suffice. You may proceed. [170]

Mr. Seering: If Your Honor please, Mr. Doolittle received a wire from Alaska last night and it is imperative that he return. He tried to get a reservation this evening, and he can't. He has one at 1:00 o'clock on the plane. I just want to know whether counsel has any objection to his being excused. I want him here, but we can't afford to have him remain.

The Court: If the occasion for rebuttal was now present, it might be appropriate to give it now.

Mr. Seering: May I confer with him now?

The Court: You may do so. Or you may postpone it to the deadline for him to leave the courtroom.

Mr. Seering: I will try and discuss it with him while the examination goes on.

The Court: Call your next witness.

Mr. Seering: Mr. Winder.

## ARTHUR R. WINDER

called as a witness by and on behalf of the defendant, having been first duly sworn, was examined and testified as follows:

## Direct Examination

By Mr. Evans:

Q. Will you state your full name? And spell the last name for the Court, please.

A. Arthur R. Winder, W-i-n-de-r. [171]

Q. Where are you employed, Mr. Winder?

A. Bureau of Federal Supply.

Q. And was that formerly the Procurement Division of the Department of the Treasury?

A. That is right.

Q. How long have you been employed with that organization? A. Since August, 1944.

Q. Now, I will ask you in what capacity you were working during September, 1945 and January, 1946?

A. I was chief of the Receiving and Issuing Unit.

Q. Now, that is in regard to the warehouses of the Procurement Division? A. Yes, sir.

Q. And I will ask you whether or not you recall the move which was made by the Treasury Department from their warehouse out here in Wallingford down to 1st Avenue South? A. Yes, sir.

Q. I will ask you whether or not you were present at the Wallingford warehouse during this move?

A. Yes, I was.

(Testimony of Arthur R. Winder.)

Q. And what was your function there at that time?

A. I was in charge of seeing that the material was moved out in the proper order and proper condition.

Q. And I will ask you whether or not that was for the purpose of getting the merchandise out of this warehouse and into [172] the next one in some sort of sequence so that your inventory would be in order at the new location?

A. That is right.

Q. I will ask you whether or not any officials of the Foster Transfer Company came down to look at the warehouse prior to the move?

A. The only person I observed was Mr. Hallam who came down with some other person who was unidentified to me, and he went through the warehouse very briefly with me. I don't think he spent more than 15 minutes in the warehouse at that time.

Q. I will ask you whether or not you observed the operations of the Foster Transfer Company at the Wallingford warehouse during this move?

A. Yes, I did.

Q. Now, I will ask you whether or not the men who loaded the trucks were on time every morning during this move?

(Testimony of Arthur R. Winder.)

A. As far as I know, they were.

Q. I will ask you whether or not you would ever receive any calls from Mr. Hallam as to whether or not the men or the trucks were there?

A. Yes, sir. Very frequently he would call in the morning or come later in the morning himself, and he would ask how many men had showed up for work and also how many trucks had showed up.

Q. And I will ask you whether or not the trucks were always there?      A. No, sir; they were not.

Q. I will ask you whether or not there were any delays in the trucks arriving in the morning?

A. Yes, there were.

Q. About how long were those delays?

A. It is difficult to remember at the particular time, but there were several mornings when there were no trucks at all the first thing in the morning.

Q. Do you recall how long it took to make this move?      A. Approximately 30 days, I believe.

Mr. Seering: Beg pardon?

The Witness: I believe it was approximately 30 days. I am not positive.

Q. (By Mr. Evans): I will ask you whether or not any officials of the Foster Transfer Company came to you to find out where their trucks were?

A. Yes. Mr. Hallam was called very—called very frequently and wanted to know how many trucks had showed up that morning and how many trucks had come back.

Q. I will ask you whether or not there was any

(Testimony of Arthur R. Winder.)

supervision of the men working at the Wallingford warehouse?

A. No constant supervision. Mr. Hallam showed up occasionally, but never stayed for any long period of time at all. [174]

Q. I will ask you whether or not at any time it was necessary for you to take over the supervision in order to get the job done?

A. I had more or less the crew that was loading the trucks to haul out to the motor trucks. I had, more or less, to watch them all the time myself.

Q. I will ask you whether or not the same personnel of the Foster Transfer Company reported out there to work every day?

A. As I recall now, there was only one person that showed up every day. It fluctuated.

Q. I will ask you whether or not there was any turnover in the other personnel?

A. In our personnel?

Q. No, in the other personnel of the Foster Transfer Company.

A. Yes. There seemed to be a new crew there almost every morning, or at least there was very frequent changes, I know.

The Court: What length of time would you say the doing of the job by the plaintiff company covered? How long a period of time was consumed or elapsed while the plaintiff was engaged in doing this job, the plaintiff, Foster Transfer Company?

The Witness: I don't recall the exact dates now.



(Testimony of Arthur R. Winder.)

I say I think it was approximately 30 days on a calendar [175] basis.

Q. I will ask you whether or not this new personnel that showed up quite frequently in any way delayed the job by virtue of having to be informed as to what was to be done?

A. Not at that end, no.

Q. I will ask you whether or not from your observation the loading of the trucks was done properly and efficiently?

A. As far as that was concerned, I would probably say efficiently, but not according to our standards, however.

Q. In what regard was it not done according to your standards?

A. We requested the material be put on the trucks in item number as we took it out of the warehouse. That was not done. It was loaded the way the driver at the time desired it to be done.

Q. I will ask you whether or not there was any dropping of the merchandise?

A. Yes. There was considerable rough handling of the merchandise in loading on the trucks.

Q. I will ask you whether or not that caused any inconvenience or expense to the government?

A. Yes. After we returned to the other warehouse, there was a considerable amount of recouping to be done on a large number of the cartons.

Q. And that recouping—I presume that means reboxing [176] was occasioned by what?

(Testimony of Arthur R. Winder.)

A. I would say the careless handling on the trucks.

Q. I will ask you whether or not there was an even flow of trucks so as to keep the men at the warehouse busy?      A. No, there was not.

Q. Can you estimate the time lag between trucks during which the crew would not be working?

A. Well, there was sometimes as much as two hours and on at least three occasions I was able to make a trip from the Wallingford warehouse to the 1st Avenue warehouse and return and still no trucks had shown up.

Q. About how many men would be working at the Wallingford warehouse on this loading operation?

A. I believe there was six at the beginning, but that force was gradually reduced to three, I believe, at the end.

Q. Now, I will ask you whether or not it was necessary to put a government truck on the job in order to expedite it up so that it could be completed in time?      A. Yes, it was.

Q. And what kind of truck was that that the government put on?

A. We had a ton-and-a-half van.

Q. I see.

The Court: Speak as distinctly and clearly as you can so that all present can hear you. [177]

Q. I will ask you whether the driver of that truck was a government employee or a Foster Transfer Company employee?

(Testimony of Arthur R. Winder.)

A. He was a government employee.

Q. Now, I will ask you whether or not the Foster Transfer Company was using vans or flat-beds?

A. They were using flat-bed trucks.

Q. I will ask you whether or not it is necessary—whether or not it was necessary for the government to loan the Foster Transfer Company any tarpaulins or other equipment?

A. Tarpaulins, yes.

Q. I will ask you whether or not after this move was completed there was any evidence of pilferage during the move?

A. Yes, quite a bit, especially in the matter of small hand tools, things such as pliers and other tools.

Q. I will ask you just to describe briefly what kind of merchandise this was that you were moving from one warehouse to another.

A. It was mostly items of a stationery nature, paper, file folders, and things of that nature. There was also a considerable amount of dry goods.

Q. What do you mean by dry goods?

A. Cheese cloth and sheeting; and there was things such as paper towels, toilet paper. We had paint items and some medical supplies, and a few items of—along a chemical [178] line such as photographic preparations, and things such as soaps and things of that nature; in other words, miscellaneous freight.

(Testimony of Arthur R. Winder.)

Q. I will ask you whether or not there were any tools—things of that nature?

A. Yes, there was a number of small hand tools.

Q. I will ask you whether or not during the course of this move the warehouse was able to fill the requisitions which were received?

A. No, we were not.

Q. In other words, your operation, so far as supply is concerned, was stopped during this move?

A. That is right.

Q. I will ask you whether these observations which you made were reported to your superior, Mr. Street?

A. I told—told it verbally to Mr. Sbinden who was my immediate chief at that time.

Q. Now, from all of your observations of the operations of the Foster Transfer Company at Wallingford warehouse, would you say that the job was being done properly or improperly?

A. I would say, over all, it was done improperly.

Q. Now, I will ask you whether or not on other occasions prior to this move you ever had occasion to use the services of the Foster Transfer Company under this contract? [179]

A. Yes, we did.

Q. And what would those occasions involve?

A. They usually involved hauling material from a car siding—from a car or from a steamship dock.

Q. To where?

A. To our warehouses either at Wallingford, 8th Avenue, or occasionally to 1st Avenue South.

(Testimony of Arthur R. Winder.)

Q. I will ask you whether or not that was a rather frequent occurrence?

A. No. We didn't use them any more than we had to. I think we used them approximately nine or ten times.

Q. I will ask you whether or not on those occasions the trucks which you ordered showed up on time?

A. Very seldom. They practically never did.

Q. I will ask you what if any action was taken by any of the officials of the Foster Transfer Company to remedy that situation?

A. None that I know of.

Q. How would you order these trucks—call up, write them a letter, or what would you do?

A. By telephone, usually, to Mr. Hallam.

Q. And on any occasions would you call back when the trucks didn't arrive?

A. Invariably when the truck would not show up at the time, [180] we would check back to see what had happened.

Q. And when you called back, I will ask you whether or not the person answering the phone knew anything about the first call?

A. Very frequently they would not.

Q. In other words, from your observations will you state whether or not it appeared that they had any proper record of their dispatches?

A. It was apparent from the conversation with the gentlemen who called himself the bookkeeper at

(Testimony of Arthur R. Winder.)

the Foster Transfer that Mr. Hallam who took care of the dispatching, who had knowledge of the move, had not told anybody else about it.

Q. I will ask you whether or not on those occasions Mr. Hallam would come out to the warehouse?

A. Yes, he did—on several occasions. He would come out to the warehouse and ask if the truck had showed up with the merchandise yet.

Q. And on those occasions had the truck shown up?     A. No.

Q. What if any action would Mr. Hallam take then?

A. Well, he usually—I don't know what he did then. Of course, he went out and seen what action he could take to get the trucks in there.

Q. Now, I will ask you whether or not you had occasion to use [181] other trucking firms before this contract with Foster Transfer Company was made, and since then?     A. I have.

Q. I will ask you whether or not you have had any complaints to the services rendered by other firms?

A. There has been some complaints, but not to the extent that we had with the Foster Transfer.

Q. I will ask you whether or not the other trucking firms are able to have their trucks there on time?

A. Yes.

Q. And I will ask you whether or not that was the situation with the firm which had the contract



(Testimony of Arthur R. Winder.)

prior to the time Foster Transfer had the contract?

A. Yes, sir.

Q. And I will ask you whether or not that has been the situation with the trucking firm which has had the contract since Foster's contract was canceled?

A. Yes.

Q. Will you state whether or not all of these discrepancies which you have mentioned here were reported by you to your superiors?

A. Yes, sir.

Mr. Evans: You may cross-examine. [182]

#### Cross-Examination

By Mr. Seering:

Q. Were you requested to report them to Mr. Street?

A. I did not report them to Mr. Street. I reported them to Mr. Sbinden.

Q. You were requested to report them?

A. He was my superior and, naturally, I turned all my information over to him.

Q. Were you requested to?

A. It was my duty.

Q. Were you requested?

A. I told him on my own initiative.

Q. Were you asked before this job started to watch it particularly for the performance of Foster Transfer?

A. No, sir.

Q. Now, are you aware that before this job was taken that Mr. Doolittle and Mr. Browne—do you know Mr. N. C. Browne who was an employee of the Treasury Procurement Division?

(Testimony of Arthur R. Winder.)

A. I know Mr. Browne. Whether he is the one referred to now——

Q. Were you there when he and Mr. Doolittle went over this job quite extensively before it was awarded to the Foster Transfer? [183]

A. I don't recall that.

Q. You do not know anything about that?

A. No.

Q. Now, you testified that according to your recollection this took 30 calendar days. Do you know that the actual working days consumed on the job were 13?

A. I don't have access to those records. I couldn't say.

Q. And you wouldn't question that figure, however?

A. I am in no position at this time to do so.

Q. And do you know that for three days the job was tied up because of weather—by mutual agreement between Mr. Street and the Foster Transfer Company?

A. I don't believe that is true. I don't recall any day when there was no activity of any trucks whatsoever.

Q. Do you know that the job was tied up for several other days by an elevator failure?

A. I don't know of any day when there was any trucks that did not move at some time during the day.

Q. You do not know about any elevator failure?

(Testimony of Arthur R. Winder.)

A. I heard about that. That is true.

Q. How long did that tie up the job?

A. I do not know. I was not down at 1st Avenue and I don't know the time taken up.

Q. As far as you could see from your observation, any delay was entirely attributable, then, to the Foster Transfer Company and its employees, is that right? [184]

A. I would say yes.

Q. There were no excuses of any kind for delay on their part, as far as you could see?

A. Will you explain that question again?

Q. I just asked you whether there were any excuses such as weather or elevator failure or difficulty in loading facilities that would excuse delay—that you could see?

A. No.

Q. Now, as to pilferage. You, of course, don't know who pilfered the articles?

A. No, sir.

Q. You don't know whether it might have been other government employees or the employees of this company?

A. No, sir.

Q. Pilferage is, of course, a common thing in moves of this nature, isn't it?

A. This is the only time we have moved that I have encountered pilferage.

Q. Beg pardon?

A. This is the only time I have had any knowledge of that.

Q. Did you file any claims for pilferage against the company?

A. No, sir; I don't believe so.

Q. You testified as to the question of the stop-

(Testimony of Arthur R. Winder.)

ping of the issuing of articles out of stock during this move, did you? [185]      A. Yes.

Q. Isn't it a fact that you did not, and that was another factor that held them up in making the move?      A. Will you explain that, sir?

Q. I say, is it not a fact that you did not stop issuing out of stock and that was a factor in making the move?      A. We did stop issuing.

Q. You say you did?      A. We did.

Q. How many complaints do you know of against the City Transfer?

A. Against the City Transfer?

Q. Yes. They were the company who had this contract immediately preceding and immediately following the Foster Transfer period of performance, isn't that correct?

A. Personally, I know of no serious case at all.

Q. Do you know of any?

A. Nothing of any—nothing serious at all, no.

Q. How many? Could you just give us a round figure?      A. What?

Q. How many claims did you hear of—complaints?

A. Total complaints against City Transfer?

Q. Yes.      A. I have heard of none myself.

Q. You don't know of any? [186]      A. No.

Q. As far as you know, this is the only incident where you had any close contact with the Foster Transfer Company?

A. That is right, except on hauling from the cars to the docks.

(Testimony of Arthur R. Winder.)

Mr. Seering: No further questions.

Redirect Examination

By Mr. Evans:

Q. In regard to the pilferage, I will ask you whether or not any of your personal belongings were taken during this move from your desk?

A. Yes, they were.

Q. I will ask you whether or not, other than the Foster Transfer employees, if there were any other people around the warehouse who were not there before?

A. No, sir.

Q. I will ask you whether or not these personal belongings from your desk disappeared during the time that the Foster Transfer employees were there?

A. They did.

Q. Now, in regard to the pilferage of the items of stock, I will ask you whether or not you have had any other experiences with pilferage on the same scale as that during this move? [187]

A. No, sir.

Q. Can you explain a little more in detail the nature of the items which were pilfered?

A. As I say, they were things like pliers, screw drivers and small hand tools of that nature. We usually found that they would come in small individual boxes, and the box would be open and they would be taken out and the cover replaced.

Q. I can't hear you.

A. Usually you found it in little individual boxes such as pliers come in, where the material would be

(Testimony of Arthur R. Winder.)

removed from the box and the cover replaced and an empty box left in the file.

Q. Were you able to discover that immediately upon completion of the move?

A. No, we could not.

Q. I will ask you whether or not you found that sort of a situation to exist at any time prior to the move?

A. No, sir.

Q. I will ask you whether or not you found that situation to exist at any time since the move?

A. No, sir.

Mr. Evans: No further questions.

Mr. Seering: That is all.

(Witness excused.) [188]

The Court: Call your next witness.

Mr. Seering: Your Honor, at this time I would like to call Mr. Doolittle for just a couple of questions.

The Court: Mr. Doolittle is called back. Is this a part of the plaintiff's case?

Mr. Seering: No. This will be rebuttal.

The Court: Mr. Doolittle is called out of order for rebuttal. You may come forward.

## REBUTTTAL EVIDENCE FOR PLAINTIFF (Out of Order.)

L. H. DOOLITTLE

recalled as a witness by and on behalf of the plaintiff, further testifies as follows:



(Testimony of L. H. Doolittle.)

Direct Examination

By Mr. Seering:

Q. Mr. Doolittle, as far as you can tell, and you have checked your records as I understand it, what was the total number of individual jobs performed by your company under this contract?

A. Well, I haven't the exact total with me here, but it was between 12 and 1400.

Q. Now, on this Wallingford job, did you have any complaints or any argument with the Procurement Division of the Treasury Department after it was completed? [189]

A. The only complaint which we had, or discussion we had over it was that there was—were some hours for labor which they did not think were right and some hours for truck time which they did not think was right, and we discussed aloud those and they came to a total of \$161.

Q. Out of a total of what?

A. Approximately 500.

Q. Now, out of those instances that occurred, do you have any record here illustrating the type of complaint and difference that you had?

A. They are all there.

Q. Which file is it?

The Court: Let him have all of the files, if they can be handled.

While the witness is looking for that material, Mr. Reporter, will you read all of the questions and answers since he resumed the stand?

(Testimony of L. H. Doolittle.)

(The reporter then repeated the requested questions and answers.)

The Court: You may continue.

Q. (By Mr. Seering): Refer to your records and without going into detail just classify them as to type of complaint involved.

A. Well, the first one was a truck which was  $\frac{1}{2}$  hour late, a disallowance of \$2.50; another one was two men did not [190] arrive on the job, \$4.50; two men reported at 8:45 instead of 8:00 o'clock, disallowed \$2.25.

Q. Excuse me. Does that represent in general the type of difference that you had with the Procurement Division? A. That's right.

Q. I want to save time and I will not go into them all. Will you explain to the Court how you base your charges? In other words, how does a complaint—how can a discrepancy like that occur?

A. Well, on a job like this, if a man doesn't show up we can't force him to. And ordinarily our men turn in their time and we pay those men the union scale for a day's work.

Q. Now, when you say they turn in their time, that voucher or whatever you call it, is that signed by the government inspector on the job?

A. That is right.

Q. And do you have the vouchers covering this job here? A. I do.

(Testimony of L. H. Doolittle.)

Mr. Seering: Mark this.

(Work tickets for men and trucks marked Plaintiff's Exhibit No. 5 for identification.)

The Court: Now, will you in one phrase state what these vouchers are for? [191]

The Witness: Those are the work tickets for men and trucks which were signed for by the government man on the job as billed on the invoice.

The Court: Are these valid items for which your company received payment or are they items in respect of which the government claimed a reduction from our statement of amounts due to the government?

The Witness: No, those are items on which we received payment and we, ourselves, on our own behalf, allowed these deductions after they were signed for on those tickets.

The Court: Do you mean that these items in this Plaintiff's Exhibit No. 5 are included claims by the government for deductions or refunds on account of wrongful billing or wrongful payment?

The Witness: No, sir.

The Court: Well, I would like you to bring out what they are. If you could ask the Witness a question and let him by one word or one phrase state what the nature of this exhibit is——

Mr. Seering: I will, Your Honor.

Q. (By Mr. Seering): Are these the work sheets, all the work sheets covering the Wallingford move? A. Yes.

(Testimony of L. H. Doolittle.)

Q. And are all of them signed by the government inspector [192] on the job? A. Yes.

Q. And those items for which a disallowance was claimed by the Treasury Procurement Department, were your charges based upon a work sheet signed by a government inspector? A. Yes.

Q. Do you have any other way of determining the accuracy of the work sheets unless you have yourself or someone on your behalf on the job every minute? A. No.

Mr. Seering: I will offer the work sheets in evidence.

*Voir Dire Examination*

By Mr. Evans:

Q. As I understand, all these vouchers are signed by some government officer on the job?

A. That is right, sir.

Q. Now, a number of these were disallowed, isn't that correct?

A. No. That total amount—the hours which were disallowed are on these sheets and the total in dollars and cents was \$106.63.

Q. Well, you have there—

Mr. Seering: We haven't offered them yet.

Mr. Evans: I think the two of them should go in [193] together.

Mr. Seering: I have no objection.

The Court: Let the next one be marked Plaintiff's Exhibit No. 6.

(Testimony of L. H. Doolittle.)

(Voucher No. 11-3237 with Deduction Sheets marked Plaintiff's Exhibit 6 for identification.)

The Court: Will some one give the witness an opportunity to characterize Plaintiff's Exhibit 6 in accordance with the nature of the subject therein dealt with?

Mr. Evans: Well, I believe we can stipulate as to what that is.

Mr. Seering: Well, if he will just tell us. I am not sure that I can accurately.

Q. (By Mr. Evans): Will you tell us what Exhibit 6 is?

A. That is the voucher and our invoice which we tendered to the Treasury Department for payment, with a list of deductions and disallowances which the Treasury made.

The Court: Well, is it a correction of Plaintiff's Exhibit 5?

The Witness: No, sir.

Mr. Seering: No, Your Honor.

The Court: You may proceed.

Mr. Evans: Does Your Honor have the question in [194] regard to it? I do not understand what it is. If Plaintiff's Exhibit 5 represents the invoices which he tendered to the government, this is either a corrected invoice, apparently, or else it is a claim for deductions originating with the government and put forth by the government.

(Testimony of L. H. Doolittle.)

Mr. Seering: Well, I think it is the latter.

Q. (By Mr. Seering): Is that correct? Is your voucher requesting payment of the total amount of these work sheets? A. That is right.

Q. And attached to it is the government's claim for deductions on account of men not being there or trucks not being there? A. That is right.

The Court: Well, you said that Plaintiff's Exhibit 5 consisted of vouchers for work done on the Wallingford move. Are these corrected vouchers in respect to the same thing or is it something that contains only papers which originate with the government addressed to you?

Mr. Seering: Not corrected vouchers, Your Honor. We put in a claim for the full amount.

The Court: I am asking the witness.

Mr. Seering: Very well.

The Court: Let the witness inform the Court as to [195] the nature of this material that is contained in Plaintiff's Exhibit 6. I just want him to characterize it to reflect the nature of the exhibit.

The Witness: Your Honor——

The Court: Just a moment.

Ask the question, Mr. Seering.

Q. (By Mr. Seering): Will you explain to the Court, in answer to the Court's question, what that is?

The Court: I want you to give it a name which reflects the character of the exhibit.



(Testimony of L. H. Doolittle.)

Mr. Seering: I only know how to ask him what it is, Your Honor. I am sorry.

A. This, Your Honor, is our invoices to the government, made from the work sheets which were signed by government men, with the voucher which we made to the government for payment and a list of disallowances which we allowed on the total payment.

The Court: Proceed.

Mr. Seering: Do you have any objection to these?

Mr. Evans: I haven't any objection.

The Court: Plaintiff's Exhibit 6 is now admitted.

Mr. Evans: And 5 is also admitted?

The Court: It has already been admitted.

Mr. Seering: I offered 5. I now offer 6.

The Court: Both have been by the Court admitted. [196]

(The exhibits heretofore marked Plaintiff's Exhibits 5 and 6 for identification were then received in evidence.)

Q. (By Mr. Seering): Did you question the disallowance of the items to which you testified?

A. Yes, I did.

Q. And what happened on that?

A. Oh, I finally agreed to disallow those and they agreed to put it through for payment.

Q. And how long after that was it that your notice of termination of contract was received?

(Testimony of L. H. Doolittle.)

A. Very shortly. I cannot tell you the exact date.

Q. Now, in regard to the incident with the Immigration and Naturalization Service, the incident that was testified to, can you tell us whether you have checked your records and whether or not the bill that was rendered by you for \$95 and something, as was shown here this morning, was or was not paid? A. It was paid.

Mr. Seering: You may cross-examine.

Cross-Examination

By Mr. Evans:

Q. Now, do I understand that you had no way of checking to see whether or not your own employees were on work or at [197] work at the proper time? A. We did.

Q. You had somebody there to check and see that they were there at the proper time?

A. That is correct.

Q. Well, then, how do you explain your previous statement to the effect that you had no way of knowing whether or not the men actually arrived on time?

A. No, I did not mean it that way, Mr. Evans. I said I had no way of making or forcing the men to arrive on time. When a man comes to work in the morning, we must pay him a full day's pay, and when my man, or a man who made up those work tickets and got those signed by the government, whatever is signed for on those work tickets,

(Testimony of L. H. Doolittle.)

that is the way they are billed, and I, personally, or no one else in the office would know if a man was 15 minutes late, an hour late or if he didn't show up at all if it was signed for upon those tickets.

Q. In other words, you were depending upon the government to keep your time books for you?

A. On that type of work it was up to the government because they were ordering our men and they were ordering the trucks. It was the government's discretion as to how many men we used. It was the government's discretion as to how many trucks we used. They could work one [198] truck or 10 trucks, one man or 50 men.

Q. You mean they called up every day and said we want 25 men here, 10 men there and some trucks there?

A. That is right.

Q. Every day during this whole move?

A. Every day.

Q. Who would call you and give you that information?

A. Lloyd—Lloyd—I don't know what the man's last name was. Lloyd was his first name.

Q. Do I understand that you had no way of knowing in your office whether or not a man showed up for work other than by the records that the government furnished you?

A. Not until my man reported back from the job at nine or ten o'clock in the morning.

Q. And even if a man hadn't shown up all day,

(Testimony of L. H. Doolittle.)

you would still bill the government for it, wouldn't you?      A. No, sir.

Q. Well, you did on your bills here, didn't you?

A. No, we did not.

Q. There were many instances in which trucks were late and men were late on which disallowances were made?

A. You have got them there.

Q. You permitted all these disallowances?

A. Yes.

Q. Isn't it a fact that you permitted them because you, in [199] your organization, had absolutely no way of knowing whether or not a man showed up on time or——

A. No, you are wrong there. We send a man out. He makes out a bill of lading which is an exhibit here.

Q. What exhibit is a bill of lading?

A. The next to the last exhibit. And he brings that signed bill of lading back. It is A-5—Exhibit No. 5. He brings this signed bill of lading back to our office. From the signed bill of lading we then make out our invoice and invoice the people concerned.

Q. But you, yourself, nor any official of your company, knew whether any of that had ever been performed except by the——

A. The signed bill of lading.

Q. ——signed bill of lading. Now, do I understand from your testimony that your company per-

(Testimony of L. H. Doolittle.)

formed all of this contract faithfully and fully complied with all the terms?

A. That is correct.

Q. There were no discrepancies at all?

A. We did it to the best of our ability, yes.

Q. I am not asking about your ability. It is obvious from Mr. Hallam's testimony that you didn't have the men or materials to perform it. But is it your testimony that you did perform this contract fully with no discrepancies?

A. Yes, it is. [200]

Q. It is your testimony that you had the equipment and the men to perform this contract?

A. We had enough equipment and we had enough personnel to do the work.

Q. Well, how do you account for the fact that you didn't send the helpers along, then, when Mr. Steele ordered the trucks?

A. Well, to be truthful, I don't recall the incident.

Q. How does it come that you weren't able to get the trucks over to Mr. Smith's place for the move at 8:30 in the morning instead of 2:30 in the afternoon if you had enough men and equipment to perform the job?

A. On that particular instance we were trying to get some cardboard boxes to put their material in for them and I finally talked to the man down there and he told me personally to send a truck down and they could move the desks and we could

(Testimony of L. H. Doolittle.)

get the boxes in the morning and move the rest of it.

Q. Isn't it a fact that the trucks were called for at 8:30 in the morning?

A. That is right. I don't know. It could be, yes.

Q. And they didn't show up until 2:30?

A. I don't know when the trucks showed up.

Q. You don't deny that Mr. Smith is correct in his statement? [201] A. No.

Q. How do you account for that delay if you had the men and materials to perform this contract?

A. On this particular instance we were not required by the contract to furnish boxes.

Q. I am talking about having the trucks there on time.

A. We could have had the truck there on time.

Q. Why didn't you?

A. They wanted boxes with the truck.

Q. So you didn't send the trucks at all until 2:30? A. No.

Q. Have you got the document which I asked you to bring yesterday?

A. No, I do not. They will bring it up when they find it from my office.

Mr. Evans: I have no further questions.

The Court: Step down.

(Witness excused.)



Mr. Seering: Mr. Doolittle may be excused?

Mr. Evans: I have no objection.

The Court: You may be excused, Mr. Doolittle——

The Witness: Thank you, Your Honor.

The Court: ——as requested by Mr. Seering.

The Court: Call the defendant's next witness.

Mr. Evans: My next witness will probably be on the stand for half an hour or so, Your Honor. Shall I put him on right now?

The Court: Yes.

Mr. Evans: Will you take the stand, Mr. Street?

### CHARLES E. STREET

called as a witness by and on behalf of the defendant, having been first duly sworn, was examined and testified as follows:

#### Direct Examination

By Mr. Evans:

Q. Will you state your full name? And spell your last name for the reporter, please.

A. Charles E. Street, S-t-r-e-e-t.

Q. Where are you employed, Mr. Street?

A. I am employed by the Bureau of Federal Supply, which was the Procurement Division of the Treasury Department.

Q. And how long have you been employed?

A. Since July of 1944.

Q. Now, in what capacity are you presently employed?

(Testimony of Charles E. Street.)

A. At present I am in charge of the Stores Division, which is one of the operating divisions.

Q. Now, I will ask you, what was your position during 1945?

A. At that time I was in charge of the Purchase and Supply Division which included purchasing as well as storage. [203]

Q. I will ask you whether or not in that capacity you were charged with any functions in regard to this contract with the Foster Transfer Company? A. I was.

Q. And what was the nature of your duty in that regard?

A. Being in charge of the Purchase and Storage Division, one of our functions was the preparation of many types of contracts, term contracts such as the drayage contract here under discussion, and the other side of the activity was in the storage and issue of materials and we naturally came in contact with all the agencies in this area and in the four northwest states and Alaska and were called upon to perform services for these agencies either in the issue of our supplies or in the making of contracts such as the one under discussion.

Q. Now, I will ask you whether or not you are familiar with the procedure which was followed or had any part in the procedure being followed in the invitation of bids when this contract was eventually awarded to the Foster Transfer Company?

(Testimony of Charles E. Street.)

A. I did.

Q. I will ask you whether or not the Foster Transfer Company bid was the lowest bid as far as dollars and cents was concerned? A. It was.

Q. I will ask you whether or not at that time there was any question in your mind or in the minds of your superiors as to whether or not the Foster Transfer Company had sufficient men and materials to perform this contract?

A. At the time the bids were opened we had an honest doubt in our mind.

Q. What, if any, action did you take to determine whether any—whether Foster Transfer Company was qualified and capable of carrying out the terms of this contract.

A. Mr. Clark, my assistant, and myself, visited Mr. Doolittle—both of the Doolittles, as I recall, at their place of business on Pine Street, at which time we discussed the equipment that they owned or operated, their personnel and their facilities for packing and crating, and went into details with them as to their facilities for doing the job and as to their previous experience. We also did some checking with some of the other agencies who had used them under a different arrangement.

Q. I will ask you whether or not at this conference that you had with the Doolittles any information was given to you as to the automotive equipment which the Foster Transfer Company had available to carry out this contract?

(Testimony of Charles E. Street.)

A. Yes. During that discussion, Mr. Doolittle gave us a list of equipment represented as being the equipment of the Doolittle Trucking Company, but explained that the operation [205] was a flexible one where the equipment would be switched first from one to the other and that it would always be available under the Foster Transfer contract in case it was needed.

Q. Now, do you have that list with you?

A. Yes, I do.

Q. Will you produce it, please?

A. Am I to remove it from the file?

Q. Yes. Just take it out of the file.

(Witness complies.)

Mr. Evans: Mark this for identification.

(List of equipment of L. H. Doolittle Trucking Company marked Defendant's Exhibit A-10 for identification.)

Q. (By Mr. Evans): You have been handed what has been marked for identification Defendant Exhibit A-10. Will you state whether or not that is the list which was given to you by the Doolittles as to the equipment—automotive equipment they had available? A. It is.

Mr. Evans: I will offer Exhibit A-10.

Mr. Seering: No objection.

The Court: It will be admitted.

(The list heretofore marked Defendant's Exhibit No. A-10 for identification was received in evidence.) [206]

(Testimony of Charles E. Street.)

Q. (By Mr. Evans): Now, I will ask you whether or not during that conference any information was given you as to the number of personnel which they had available to perform this contract?

A. That matter was discussed and we were told the number of personnel they had available.

Q. Did you make any notes on that information?      A. I did.

Q. At that time?      A. At that time.

Q. Do you have those notes with you?

A. Yes, sir.

Q. Will you refer to them and tell us what was told you as to the number of personnel they had available?

A. We were told that they had 20 drivers and 40 swampers.

Q. What is a swamper?

A. A swamper is a helper or a laborer that accompanies the truck drivers, or general laborer I would call a swamper.

The Court: How many swampers?

The Witness: 40.

The Court: And in addition to that?

The Witness: And in addition to that we were told that there was a job under way, a salvage operation at the Port on which they were using a considerable number of men, laborers and other types of men, we understood, [207] which would provide a pool of labor in case these people were

(Testimony of Charles E. Street.)

not sufficient to handle the work at any peak period or when there might be a number of agencies demanding service at the same time.

Q. I will ask you whether or not that information was used by you and your superiors in determining whether or not the Foster Transfer Company should be awarded this contract?

A. It was.

Q. Now, I will ask you whether or not there is any policy with your department with regard to giving small business men opportunities to have contracts with the government?

A. As a published policy, I can't say that there is. However, it has been a general policy that the small operator will be given a chance wherever it is possible to do so without doing anything that would be illegal or otherwise to the disadvantage of the government.

Q. I will ask you whether or not the carrying out of that policy had any influence upon the decision of you and your superiors to award this contract to Foster Transfer Company?

A. I think it did, in conjunction with the fact that these people were sincere and seemed like they were interested in doing a good job. And we believed at that time they would try and do a good job. With that policy and with [208] the statement of equipment, and in the desire to be fair to a small operator, that constituted, I am sure, our grounds for making the award.



(Testimony of Charles E. Street.)

Q. Now, upon making the award of the contract, I will ask you what if any action was taken by your office to notify other governmental agencies of the fact that the contract had been made?

A. Three days after the effective date of the contract, which would have been July 3rd—and that amount of delay was required because our reproduction work is not done in our office but is done in another office—we distributed to 85 agencies in the metropolitan area of Seattle copies of this contract, and later, if we missed any, we distributed some five or ten additional copies.

Q. Now, do you recall Mr. Hallam's statement that so far as he knew the government had taken no steps to notify the governmental agencies of this contract?

A. I do.

Q. As I understand—will you state whether or not you, of your own knowledge, know whether at least 85 were notified on the first publication?

A. The record indicates that 85 were notified.

Q. And some others were notified later?

A. Yes, sir.

Q. Now, I will ask you whether or not during the course of this [209] contract, prior to the move of your warehouses, you received any complaints as to the performance of service by Foster Transfer?

A. I did.

Mr. Seering: To what time does he refer?

Mr. Evans: From the beginning of the contract up to approximately the 15th of December.

(Testimony of Charles E. Street.)

Q. I will ask you whether or not those complaints were called to the attention of the officials and employees of the Foster Transfer Company?

A. They were.

Q. I will ask you if you can recall approximately how many complaints were actually received?

A. Well, at this time it is somewhat difficult to remember. Some of them were verbal complaints, but I would say approximately eight or nine.

Q. I will ask you whether or not conferences were ever held with the Foster Transfer Company in regard to those contracts?

A. Yes, sir; there were.

Q. I will ask you whether or not Mr. Doolittle ever attended any of those conferences?

A. Mr. Doolittle did.

Q. I will ask you whether or not you were present at any of those he attended? [210]

A. I was.

Q. Do you recall which ones they were?

A. I recall specifically a conference in August, the result of which was a confirmation letter which has already been introduced as a letter.

Q. That is Mr. Smith's letter?

A. No, I believe that is our letter.

Q. Oh, your letter.

A. Of August 26, or something like that.

Q. And can you recall what took place at that conference? A. Rather distinctly.

Q. Will you just tell the Court what took place at that conference?

(Testimony of Charles E. Street.)

A. Well, at that time we had already had a number of complaints about the new contract. I would say that the complaints were in two or three categories, failure of equipment to be on time, failure to furnish the equipment as ordered, that is, either smaller equipment or larger than was ordered, which sometimes could not be used because of the facilities available to use the equipment, and there were some cases of where work had been ordered which the agency thought could have been done during the regular hours with advance notice given where it was actually done later and overtime charges applied. And I don't remember all of the details of where the work fell [211] down, but generally it was with equipment and personnel.

Q. I will ask you whether or not those complaints were called to the attention of Mr. Doolittle?

A. They were.

The Court: At this point we will take our noon recess until 2:00 o'clock. You may step down.

(Whereupon, at 12:00 o'clock noon, Wednesday, August 3, 1949, the above-entitled matter and proceedings was recessed until 2:00 o'clock p.m., same date.) [212]

August 3, 1949, 2:00 o'clock p.m.

(All parties present as before.)

The Court: Are there any ex parte matters or matters upon agreement? If not, you may resume the trial.

(Testimony of Charles E. Street.)

Mr. Evans: Will you take the stand, Mr. Street?

CHARLES E. STREET

the witness on the stand at the taking of the noon recess, thereupon resumed the stand and testified further on direct examination as follows:

By Mr. Evans:

Q. I believe we were discussing the letter signed by you on August 28, 1945, and the conference which you had with Mr. Doolittle on that date. Now, I will ask you whether or not that letter comprises generally the results of that conference?

A. It did.

Mr. Evans (Addressing the bailiff): I believe that the original letter is in evidence as Exhibit Number A-4. Please hand that to the witness.

The Court: That is the letter of August 28, 1945.

Mr. Evans: Now, that letter has not been read to the Court yet. I would like to have this witness read it. [213]

The Court: Well, you may do that if you desire.

Mr. Seering: Both of those letters have been read.

Mr. Evans: I don't believe either one of them—

The Court: Well, this witness may read it.

A. This is a letter dated August 28th, 1945, to the Foster Transfer Company—

The Court (Interposing): This statement applies to the future and not to the present. I think

(Testimony of Charles E. Street.)

time can be saved by counsel reading written documents rather than leaving it to the witness.

You may proceed, though.

A. (Continuing): The letter is dated August 28, 1945, addressed to the Foster Transfer Company, attention Mr. H. L. Doolittle.

"Gentlemen:

"Reference is made to our conference this morning relative to service under Contract No. T11rp-156. As a matter of record, I should like to restate the substance of our discussion and the suggestions and recommendations which were made for improvement in the service under the subject contract.

"In order to eliminate the possibility of undertaking hauling jobs with insufficient accessorial equipment, a procedure should be developed so that on services ordered over the telephone all necessary information can [214] be obtained at one time and plans made for prompt and efficient accomplishment of the work requested by the ordering agency.

"In order to eliminate delays and unsatisfactory service, additional equipment should be made available, particularly in the smaller capacity units such as  $\frac{1}{2}$  ton,  $\frac{3}{4}$  ton and 1-ton trucks. When ordering agencies describe the job to be performed, a truck of the minimum size required should be utilized, and in those instances where you are unable to furnish a minimum size truck and by your own choice furnish a heavier vehicle, every precaution should be taken to insure billing at the minimum vehicle rate.



(Testimony of Charles E. Street.)

“Your employees should be strictly trained and disciplined in the importance of rendering service in absolute compliance with the ordering agencies’ wishes. You are a service agency and, as such, should observe the customers’ wishes with respect to the manner in which jobs are performed when a customer expresses his preference. In those instances where the ordering agency indicates no preference in handling, then, of course, you should do the job in the customary and most efficient way. It cannot be emphasized too strongly that when an ordering agency specifies the manner in which a job is to be performed, it should be performed in that manner even though to do [215] so may result in slightly greater cost than otherwise. This cost is frequently offset by advantages to the ordering agency in having the work performed in accordance with their specifications.

“Along this line, it might pay dividends to discuss this at more or less regular intervals with your truck drivers so that ‘customer satisfaction’ is always the objective in performing jobs under the contract.

“It is sincerely hoped that the standard of performance under this contract will be improved as a result of our discussion, and such corrective measures as you believe necessary will be applied. If complaints continue and are found to be justified, we should otherwise be forced to seek relief in



(Testimony of Charles E. Street.)

accordance with the terms of the contract. We hope this will not be necessary.

“Very truly yours,” signed by myself.

Q. Now, were you present at the discussion on September 26?      A. I was not.

Q. You were not present. Now, in regard to this movement of your warehouses, I will ask you whether or not you received—whether or not initially bids were invited from other companies to perform this move?      A. They were.

Q. And I will ask you whether or not bids were received?      A. Bids were received. [216]

Q. I will ask you if you have those bids with you?      A. I do have.

Q. Can you produce them, please?

A. (Witness complies.)

Q. Is that all?

A. To the best of my knowledge, this includes all of the papers relative to that particular job.

Q. May I see them? (Material in question presented to Mr. Evans.) Do you have the bid of the lowest bidder in here?

A. So far as I know, it is.

Q. Do you recall the name of the company which presented the lowest bid?

A. I am not sure. It was either Martin Transfer or Ballard Transfer. I don't recall which it was offhand.

Q. Well, are these three bids here all the bids that were received?

(Testimony of Charles E. Street.)

A. If that is all that there are in the file, that should represent them.

Mr. Evans: Mark this for identification, please.

(Bids marked Defendant's Exhibit A-11 for identification.)

Q. (By Mr. Evans): You have been handed what has been marked for identification as Defendant's Exhibit A-11. Will you state whether or not those are the bids which were received in response to your invitation for the [217] warehouse move?

A. To the best of my knowledge, they are.

Mr. Evans: We will offer Defendant's Exhibit A-11.

Mr. Seering: I have no objection.

The Court: Admitted.

(The documents heretofore marked Defendant's Exhibit A-11 were then received in evidence.)

Q. (By Mr. Evans): Now, will you turn to the lowest bid there and state what was the lowest bid submitted?

A. The lowest bid was that of the Martin Transfer Company.

Q. What was the amount they bid to do the job?

A. The total amount of the bid for the move, involving that portion at Wallingford and that portion at 2028, combined, was 4500 exactly.

Q. And I will ask you whether or not that bid

(Testimony of Charles E. Street.)

states as to the length of time that would be required to make the move?      A. It does.

Q. And what was the length of time?

A. Seven days from the Wallingford location and five from the 8th Avenue location.

Q. That would make a total of how many days?

A. Twelve.

Q. Twelve working days. [218]

The Court: Who submitted that lowest bid?

The Witness: The Martin Transfer.

The Court: M-a-r-t-i-n?

The Witness: Yes, sir.

Q. That information which you have just given us is in that Exhibit A-11?      A. It is; yes, sir.

Mr. Evans (Addressing the bailiff): May I see Plaintiff's Exhibit 4?

(Exhibit in question presented to Mr. Evans.)

Q. (By Mr. Evans): I will ask you whether or not Foster Transfer Company made representation to you that they felt that that contract should be awarded to them under their existing contract rather than to let a new contract?

A. Representations were made to the office through Mr. Seering—through the attorney.

Q. Now, I will ask you whether or not the Foster Transfer Company was asked to inspect the job and determine whether or not they could perform the job within the time that the lowest bidder states that he could do it?      A. They were.

(Testimony of Charles E. Street.)

Q. Now, at this time I would like to read a letter of December 14th which is in evidence, Your Honor.

The Court: You may do so. [219]

Mr. Evans: This is a letter from the Treasury Department, Procurement Division, dated December 14, 1945, addressed to Foster Transfer Company, 13th and East Pine Streets, Seattle, Washington.

“Gentlemen: Reference is made to our several telephone conversations regarding the moving of government-owned equipment and supplies from the warehouse at 3402 Wallingford Avenue to the warehouse at 1518 First Avenue South, described in detail as Item 1 of our Bid Invitation T11rp-46-104, copy of which is attached.

“This office has devoted some thought to the possibility of handling this move under Contract T11rp-156, although that contract was executed for general useage in handling varying quantities of government-owned supplies, the nature and frequency of which could not be predetermined. It was not contemplated that movements requiring the furnishing of special facilities such as lift jacks, flats, loading tractors and similar equipment would fall within the contract; such moves being susceptible of detailed specifications to be covered by special invitations to bid, such as our T11rp-46-104. Nonetheless, the U.S. Treasury Department is considering your offer to handle the move under Contract T11rp-156, provided the government's interests are definitely protected by assurance that the inventory

(Testimony of Charles E. Street.)

(approximately \$250,000) can be moved within a stipulated period, 7 working days from date of starting, [220] at a reasonable cost.

“To this end, and upon our invitation, you have examined the stock at 3402 Wallingford, discussed the specifications applying to the move, which are stated in full detail in T11rp-46-104, and you have stated verbally that you could move the material as described in Item 1 in the bid invitation within a period of 7 working days, using 3 semi-trailers and not to exceed 16 laborers which, under Contract T11rp-156 would involve an expenditure of approximately \$2200.

“Because of the value of the inventory, and the fact that the material must be moved within a stipulated period, notwithstanding your willingness to perform under a general application of contract T11rp-156, the Treasury Department will authorize such performance only upon specific assurance from you, in writing, that you can handle the movement within the provisions contained in this letter in Bid Invitation T11rp-64-104, wherein such invitation makes reference to Item 1. Your decision should, of course, be made with full regard for your contractual responsibility to furnish prompt and satisfactory service under T11rp-156 to other Government Agencies simultaneously with this undertaking.

“You are requested to promptly advise this office, in writing, whether you will guarantee satisfactory



(Testimony of Charles E. Street.)

performance [221] under the above stated conditions.

“Very truly yours, signed G. K. Clark, Chief Contract and Purchase Section.”

I would like to read the reply to that letter which is in evidence as a part of this exhibit.

The Court: You may do that.

Mr. Evans: It is a letter dated December 15, 1945, addressed to the Treasury Department, Procurement Division, 2028 8th Avenue, Seattle 1, Washington, attention: D. K. Clark, Chief Contract and Purchase Section.

“Gentlemen: We have your letter of December 14th, 1945, reference is made to the letter of December 12th, 1945, written to you by our attorney Mr. Harold A. Seering.

“It is still our position that the work embraced within T11rp-46-104 is covered by our existing contract T11rp-156.

“We again tender performance of this work in a workmanlike manner under the terms of that contract. It is our estimate that the work should require approximately seven days.

“Very truly yours, Foster Transfer Co., Inc., by: L. H. Doolittle, Manager.”

Q. (By Mr. Evans): Now, Mr. Street, I will ask you whether or not there wasn't another letter dated December 18th [222] received by you from the Foster Transfer Company? A. Yes, sir.

Q. Do you have the original of that letter there?

A. I do have the original of the letter.



(Testimony of Charles E. Street.)

Q. Will you let the bailiff have it, please, and have it marked for identification.

(Letter dated December 18, 1945, from Foster Transfer Company to Treasury Department, Procurement Division, attention G. K. Clark, marked Defendant's Exhibit A-12 for identification.)

The Witness: Mr. Evans, may I correct a statement that I made a couple or three questions back? I find that I was in error on the time here. I was looking at a paper that should not be considered—should not have been considered when I made the answer.

Q. Will you state what correction you intend to make?

A. I stated that the low bidder, Martin Transfer Company, provided for seven and five days respectively for the Wallingford and the 8th Avenue lot. That is incorrect. The proper time was nine and seven rather than seven and five.

Q. Making a total of 16 days?

A. Making a total of 16 days. That is according to the record. I misstated that.

Q. You have been handed what has been marked for identification [223] as Defendant's Exhibit A-12. I will ask you whether or not that is a letter received by your office from the Foster Transfer Company, dated December 18, 1945? A. It is.

Mr. Evans: Do you have any objections to it?

Mr. Seering: No objection.

(Testimony of Charles E. Street.)

Mr. Evans: I offer it at this time, and I would like to read it.

The Court: Admitted, and you may read it.

(The letter heretofore marked as Defendant's Exhibit No. A-12 for identification was received in evidence.)

Mr. Evans: It is a letter dated Seattle, Washington, December 18, 1945, addressed to Treasury Department, Procurement Division, 2028 8th Avenue, Seattle 1, Washington, attention G. K. Clark, Chief Contract and Purchase Section.

"Gentlemen: Referring to our letter December 15, 1945, and your letter of December 14th, 1945, relative to T11 rp-46-104 and our present contract T11 rp-156.

"We will endeavor to do this work in workman-like manner and at the same time do the work expeditiously with the guarantee of keeping the expenditures as low as possible.

"Very truly yours, Foster Transfer Company, Inc., [224] by L. H. Doolittle, Manager."

Q. (By Mr. Evans): Now, Mr. Street, on the basis of the correspondence which I have just read, and your verbal conversations with the officials of the Foster Transfer Company, I will ask you whether that decision was made to permit the Foster Transfer Company to perform this warehouse move?

A. It was.

Q. I will ask you whether or not prior to the beginning of the move you received any instructions

(Testimony of Charles E. Street.)

from your superior, Mr. Ihlanfeldt, with regard to making any check as to the performance of this move?      A. I did.

Q. Will you state what those instructions were that you received?

A. Mr. Ihlanfeldt, the Regional Manager, who had been informed of the complaints that we had received, orally as well as written, and who had been kept up to date on the operations under the contract, by ourselves and others, said that he would like to have us go ahead and use this contract and actually determine whether some of the complaints that we had received from others were justified. Many times people will complain about things and their complaints are not legitimate. We had had these complaints and we wanted to establish definitely, if we could, whether [225] they were legitimate, whether the contractor was in the right or whether the agencies were, because it not only affected us in our operations, in our dealings with the contractor, but other people likewise. So I was instructed that we should pay particular attention to the operation during the warehouse move.

Q. Now, I will ask you whether or not you did carry out those instructions?

A. I did, to the best of my ability.

Q. I will ask you whether you, yourself, made personal observations of the performance of this contract?      A. I did.

Q. I will ask you whether or not you instructed the people who worked under you to do likewise?

(Testimony of Charles E. Street.)

A. I did that likewise.

Q. Now, can you state the number of working days it actually took to perform this contract by the Foster Transfer Company?

A. For the complete job it took 27 working days.

Q. And what was the cost which was ultimately paid by the government?

A. I will have to refer to the record to get the exact figure. Approximately \$5400.

Mr. Evans: That, I believe, is already covered by an exhibit that is in. Isn't that covered by the [226] vouchers which were your 5 and 6?

Mr. Seering: That is right.

Q. Now, I will ask you whether or not during the course of your observations of this particular move you made any notes as to discrepancies which you observed? A. I did.

Q. I will ask you whether or not those notes have been transformed into disallowances as to the payment to Foster Transfer Company?

A. They were.

Q. I see.

Mr. Evans (Addressing the bailiff): Would you hand the witness, please, Plaintiff's Exhibits 5 and 6?

Q. I believe as a part of Exhibit 6 there are some disallowances made there. Can you refer to those and determine the cause and background of what occurred? A. Well,—

Q. Or are there some other documents you would prefer to refer to? A. It is included here.

(Testimony of Charles E. Street.)

Q. What is the first item on that list?

A. The first item is a \$10 disallowance on December 21st under a certain particular number here because of a delay in unloading steel shelving and resulted in hold up and movement of other merchandise throughout the day. [227] Time for two semis for a period of one hour each on Ticket 05781 is disallowed, or a total of \$10 on that transaction.

Q. Now, what was the occasion—first I will ask you: Were you present and did you see what was occurring that caused that disallowance?

A. I did. At the time I happened to be at the receiving end.

Q. And what, if anything, took place there?

A. Well, as I recall, after this length of time, a truck load of 10 steel shelves setup were received. These were shelving 7 feet high and approximately 3 feet wide and, as I recall, about 9 feet long. It was on a large semi-trailer. And we had wanted the shelving to be brought in set up so that it would not require additional time for dismantling and then later reassembly of the shelves so that we could put the stock that was being brought in into the shelves where it belonged as bin stock.

Q. What kind of stock?

A. Bin stock; in other words, broken packages where it is in the bin and stock selectors pull the items out of the bins. And we requested that this be set up and moved without being disassembled, and at the time this truck load came in Mr. Doolittle was



(Testimony of Charles E. Street.)

there, as was his truck driver and a [228] helper and eight men, I believe, who were working that end of it, and some two or three hours were involved in trying to figure out a method of getting those shelves off the truck. And during that time a couple of other trucks, or at least one—I am not sure whether there were two—I believe there were two—but there was at least one other truck that pulled up with merchandise on it, and there were no concrete suggestions that Mr. Doolittle was able to make. His men didn't know how to get the equipment off. And finally our warehouse superintendent, who was Mr. Sbinden, authorized dismantling of bins in order to get them up off the floor which would, of course, require disassembly and delay the operation.

That was the basis for part of this disallowance here.

Q. Now, Mr. Sbinden has been mentioned two or three times. Is he available now to testify?

A. Mr. Sbinden is deceased.

Q. Now, I will ask you whether or not from your observations of Mr. Doolittle's supervision of this unloading you were able to form any opinion as to his ability or experience in handling matters of that kind?

A. Well, the indications were that no one in the crew, or Mr. Doolittle, or his truck driver, or any of the other [229] people knew how to go about this job. They were at a loss, I would say, as to what to do, and I didn't hear Mr. Doolittle make any suggestions or try to tell his people what to do.



(Testimony of Charles E. Street.)

They tried a number of things. They tried to get it off, but nobody knew how.

Q. How much time was lost there?

A. Three hours, as I recall.

Q. Now, what is the next item on there?

A. The next item also refers to the date of December 21 and a certain ticket number and is a disallowance of \$12. The statement is: "Because of extremely poor planning and lack of supervision it required eight men of the crew for a period of two and one-half hours to unload steel shelving that should have been unloaded in one hour and a half under proper management; therefore, eight hours are disallowed." It is a part of the same transaction.

Q. A part of the same transaction. Now, are there any other items on there of that same transaction?

A. No. I am sure that is all of that transaction.

Q. Now, what is the next transaction?

A. The next transaction refers to a two dollar and fifty cents disallowance because a truck reported at 9:00 a.m., and a half hour was disallowed; in other words, a half hour was allowed to get to the job, but the effective time [230] would have been, then, from 8:30 to 9:00 o'clock rather than from 8:00 o'clock until 9:00.

Q. Now, the bill submitted to you would have covered the truck being there at what time?

A. Presumably being on the job from 8:00 o'clock, or arriving at 8:30, allowing a half hour for intransit time.

(Testimony of Charles E. Street.)

Q. Now, the disallowance was based on an observation made by you?

A. I presume it was. Most of these observations were made by myself. Some of them were reported to me by Mr. Sbinden and others, but most of them were made by myself.

Q. Now, what about the next item?

A. The next item is a \$1.50 disallowance which states that one man of a crew of 7 at Wallingford on December 22nd reported at 9:00 a.m. Therefore, one hour is disallowed.

Q. What is the next item?

A. The next item is a 75 cent disallowance representing a half hour's time for one man who reported to work at 8:30 rather than at 8:00 o'clock.

Q. All right. What is the next item?

A. The next item is a \$5.00 disallowance. Two semis knocked off at 3:30 p.m. after completing delivery at 1518 1st Avenue. Time allowed to 4:00 p.m. One hour's time disallowed. [231]

Q. All right. What is the next item?

A. A dollar and a half disallowance at 1518 1st Avenue South. One man reported at 9:00 a.m. One hour regular time disallowed.

Q. What is the next item?

A. \$2.50 disallowance at Wallingford. A semi did not arrive on job until 9:15 a.m. Half hour disallowed.

Q. What is the next item?

A. The next item is also a \$2.50 disallowance at Wallingford. Semi pulled off job at 11:30 a.m.

(Testimony of Charles E. Street.)

Hamilton. That was a sub-contractor. One-half hour disallowed.

Q. All right. What is the next item?

A. \$2.50 disallowance at Wallingford. Semi pulled off at 11:30 a.m. One half hour disallowed.

Q. All right. What is the next item?

A. A \$4.15 item at 1518 1st Avenue South. Two men did not show up until 9:30 a.m., therefore, three hours regular time disallowed.

Q. All right. What is the next item?

A. \$2.25. Two men reported for work at 8:45 a.m.

Q. What is the next item?

A. \$10; Wallingford; left warehouse 1518 on this date at 1:10 p.m., immediately after driver. Cooper had unloaded and started for Wallingford. Cooper did not arrive at Wallingford until 3:45 p.m. Allowing 35 minutes for [232] normal trips, two hours time was disallowed. That was my own personal observation. I happened to be there on that date.

Q. All right. What is the next item?

A. The next item is a \$10 disallowance; Wallingford; Hamilton truck reported 10:00 a.m., and driver out dissipating night before; made two loads and was unloaded at 2:30 p.m.; time allowed to 3:00 p.m.; two hours disallowed.

Q. All right. What is the next item?

A. \$1.50 disallowance; Wallingford; two men reported 8:30 a.m.; one hour regular time disallowed.

Q. All right. What is the next item?

(Testimony of Charles E. Street.)

A. \$3.00; only crew of four remained to unload trucks; two hours standard time disallowed.

Q. All right. What is the next item?

A. \$1.88 disallowance at Wallingford; one man on at 8:30 a.m.; one man on at 8:40 a.m.; one and a quarter hours regular time disallowed.

Q. What is the next item?

A. \$45.25. No record on this semi. Only four semis working on January 2nd. And it refers to the ticket number. Invoice disallowed.

Q. All right. What is the next item?

A. The next and final one is \$42.50 disallowed. Only four semis on the job on January 3rd. [233]

Q. In regard to those last two items, do I understand you correctly, that they billed you for a semi on each day which never showed up?

A. Apparently more trucks were billed for than showed up,—according to the records.

Q. Now, I will ask you whether or not at the time this job was going on you were in contact with any of the officials of the Foster Transfer Company calling their attention to the unsatisfactory service which they were performing?

A. Mr. Hallam was on the job part of the time and I called it to his attention a number of times, that things were not moving properly and that we needed more men and a little better supervision of the men, and in some cases more equipment. That was almost a daily occurrence.

Q. And as a result of your complaints was there any improvement in the performance?

A. They tried to get men when more men were

(Testimony of Charles E. Street.)

indicated as being needed, but they were not always able to do so,—also equipment.

Q. Well, was there any improvement in the performance?      A. No.

Q. I will ask you whether or not they had the men regularly on the payroll to perform this job, to your knowledge?

A. I couldn't state definitely, but I am rather sure they didn't from what I was told. [234]

Q. I will ask you whether or not you had any concern about the job taking more time than you had anticipated?

A. We had a great deal of concern about the job taking more time.

Q. In what regard would it cost your operations any concern by taking 27 days rather than 16 days?

A. Well, as has already been stated, while the move was going on we were completely shut down, and there are some 500 agencies in the four north-west states and Alaska who have jobs to do, whether it is fighting forest fires, building dams, or whatever it may be. Many of those agencies depend on us for some of their operating supplies, so during the duration of the move, if they were in need of articles and had orders in, of course we could not accommodate them. So in addition to the additional work of crawling out from under an extended backlog, we could have adversely affected operations of other agencies who had jobs to do and who may have been depending on supplies from us.



(Testimony of Charles E. Street.)

Q. How many agencies did you say depended on you for supplies?

A. Five hundred and six government offices in the four northwest states and Alaska who requisitioned supplies through our operation.

Q. I will ask you whether or not you had any concern about the cost which was mounting up?

A. We did. It was likewise a concern to us because of the [235] peculiar operation we have.

Q. In what regard?

A. Our operation differs from other government agencies in that it is largely a self-supporting operation. Merchandise is bought in large quantities, marked up and sold to other government agencies at a cost, or at a selling price which covers a nominal mark up for handling the goods. We do not operate from appropriative funds as do other government agencies. We have an operation very similar to a business where we must pay for the job from the business done. And if we were stopped completely for that length of time, it means that there was no buying being done; in other words, there was no revenue, because we must pay for our operation.

Q. Now, will you state whether or not you have had any dealings with other contracts of this nature?

A. I have.

Q. I will ask you whether or not you had any dealings with the contractor who had the contract prior to the time Foster had the contract?



(Testimony of Charles E. Street.)

A. The administration and supervision of the contract fell within my office. I had no dealings because there was no—nothing to be taken up.

Q. I will ask you whether or not during the contract prior to Foster's contract you had received any complaints such [236] as the ones you received by Foster Transfer? A. Never a one.

Q. I will ask you whether or not you received any complaints on the contractor who took over after Foster Transfer's contract was cancelled?

A. None.

Q. I will ask you whether or not if any complaints had been received on either of those contracts it would have come to your attention?

A. They would have until October of 1947, at which time our office was slightly reorganized and after that date I wouldn't know about it.

Q. What year?

A. About October of 1947.

Q. October, 1947? A. Yes, sir.

Q. How long prior to this contract with Foster Transfer Company were you in a position where you would have known about any complaints that were received?

A. Back to July of 1944, when I went to work for this bureau.

Q. Now, in regard to your experiences with other contractors on this same type of contract, have you ever had to have government men out supervising and checking their work? A. No, sir.

(Testimony of Charles E. Street.)

Q. I will ask you whether or not under this contract you [237] consider it necessary for the government to have a man on the job checking their work?

A. I believe the disallowance here, which is an exhibit, would indicate that it is necessary.

Q. As to all contractors?

A. No. I misunderstood your question, perhaps. Will you restate it, please?

Mr. Evans: Will you read the question, Mr. Reporter?

(The last question was repeated by the reporter.)

A. My answer is yes.

Q. That is on the Foster Transfer contract or contracts of this nature?

A. On this contract the question was.

Q. I will ask you whether or not at the time the contract was let any such—whether or not any such contract was let, you anticipate that it is going to be necessary for the services of a government man to be used in checking on the contractor?

A. We did not.

Q. Now, I will ask you whether or not you recall any forklift truck being procured for this particular move of your warehouse merchandise?

A. I do. [238]

Q. I will ask you who made the arrangements to make the truck available?

(Testimony of Charles E. Street.)

A. Our office arranged for the loan of the fork-lift truck.

Q. From whom?

A. Army Service Forces Depot.

Q. From another governmental agency?

A. From another governmental agency.

Q. And at whose instance was that arrangement made?

A. I understood from Mr. Hallam that Mr. Doolittle thought that the fork-lift truck would be suitable for the operation in order to expedite it. That is what I was told by Mr. Hallam.

Q. Did Mr. Hallam think it would be suitable?

A. He did not. He did not think it would work.

Q. I will ask you whether or not the fork-lift truck was procured? A. It was.

Q. And who went after it?

A. Mr. Hallam.

Q. And during the time that he was gone was there anybody supervising the work?

A. No, there was not.

Q. I will ask you how long it took him to go get the fork-lift truck? A. A half a day. [239]

Q. I will ask you whether or not after he got the fork-lift truck it operated?

A. It did not.

Q. I will ask you whether or not it was necessary to return the truck? A. It was.

Q. How long did that take?

A. A half day.

(Testimony of Charles E. Street.)

Q. And during the time in which he was taking the truck back was there anybody there to supervise the men who would otherwise have been under Mr. Hallam?

A. There was no supervision.

Q. Now, in Exhibit Number A-6, on page 55, there is a memorandum which purports to be prepared by you on February 19, 1946. Do you have a copy of that memorandum? A. I do.

Q. I will ask you, what was the purpose of your preparing that memorandum?

A. My purpose in preparing the memorandum was to set down for the record our experience with the contractor and experiences as reported by others.

Q. I will ask you whether or not that memorandum, dated February 19th, reflects the information which was available to you through your own personal observations and through reports received by you in your official capacity? [240]

A. It was.

Q. Will you turn to that report, please, either the one you have in your file or the one in the exhibit? Now, I will ask you whether or not at the time you made this report all the information set out in there was fresh in your mind?

A. It was.

Mr. Evans: May it please the Court, this particular part of Exhibit A-6 is already in evidence. At this time I believe it would save time if I read this report of February 19.

(Testimony of Charles E. Street.)

The Court: You may do that.

Mr. Evans: This is a memorandum dated February 19, 1946, addressed "To: The Record", from Charles E. Street, Acting Chief, Purchase & Supply Division. Subject: Contract T11rp-156—Foster Transfer Company.

"As a prelude to this administrative finding of facts relative to the drayage contract referred to above, it seems desirable for the record to indicate the peculiar position of Treasury-Procurement in this instance. This contract was entered into by Treasury-Procurement as a general service contract for the convenience and economy of all Federal Agencies in the Seattle Metropolitan Area.

"Since the inception of the above contract on July 1, 1945, many Federal Agencies in the Seattle Metropolitan [241] Area have from time to time reported by telephone upon the unsatisfactory work, the inadequacy of equipment, lack of experienced personnel—adequate personnel, or any personnel at all, and upon other conditions in general which, in the opinion of the various Federal Agencies, have constituted inability to perform a job satisfactorily under the contract. Although these agencies have reported these unsatisfactory conditions by telephone, very few have felt inclined to present written data for the record, although some have done so, as for example, the Office of Surplus Property and the Fish and Wildlife Service, whose letters are self-explanatory and now in the files.



(Testimony of Charles E. Street.)

“Some of the other agencies who have made verbal or telephonic complaints, together with the subject matter of such complaints, are as follows:

“Fisher Market News. This agency was in the process of transferring an employee to a new station in Chicago. The employee was to take a part of his belongings with him and have the remaining part held in storage until arrangement could be made at his new post to receive his goods. On the day of his departure, the pickup was made so late that the employee barely had time to catch his transportation, although adequate advance notice had been given to the contractor that the job was desired. In removing employee's goods from a second floor, some [242] damage was done to the landlord's staircase, which the contractor agreed to have repaired at his expense (the contractor's expense). Inasmuch as the weather was wet and rainy, the employee was greatly concerned that his goods would be damaged while in transit to the depot or storage warehouse, since the contractor had called for the goods with an open flat-bed truck and inadequate padding, notwithstanding the weather and the fact that a van had been ordered. Although the contractor apparently made good the damages which his employees had done to the premises being vacated and although a later inspection of the goods which were moved by means of a flat-bed truck in wet weather showed no actual damage or loss, the fact remains, as will be shown many times in suc-



(Testimony of Charles E. Street.)

ceeding paragraphs, that as a general rule personnel which can be hired by the contractor are of the poorest type, are inadequately instructed or supervised in the job to be done, and do not perform in a workmanlike efficient manner which can normally be expected of a well-established firm who contracts and proposes to render service to the Federal Establishments of a Metropolitan Area such as the City of Seattle, with several—perhaps one hundred Federal offices, plus large Military and Naval Installations with employees totaling several thousands. This incident also demonstrates the lack of equipment of a type suitable for [243] hauling and drayage of household goods, notwithstanding definite provisions of the contract requiring this type of work and statements made by the contractor at the time the contract was awarded that adequate equipment was either owned or available to him on rental agreements at all times for any work which might develop as a result of the said contract.

“U. S. Employment Service. This office reported to the writer that the Foster Transfer Company had removed two tables from one building to another location within a radius of a few blocks (four to eight blocks), and that this job had cost in the neighborhood of \$14.00, which was considered to be excessive, as it represented approximately three hours work, when in the opinion of this officer, who had much previous experience with contractors, the job should have been done in less than half the time.

(Testimony of Charles E. Street.)

Upon further questioning, this officer reported that the men sent to do the job did not apparently know how to perform the work, as a result of which much time was spent in a 'trial and error' approach to the task. Here again the lack of adequate supervision or any instructions is conspicuous by its absence reflected in the way the job was done and the resultant excessive costs, which all lends credence to the 'fly by night' character of operations conducted by this contractor. [244]

"Alaska Communications System. This office reported they had placed an order with the Foster Transfer Company to furnish adequate men and a closed van to transfer certain expensive, technical radio and laboratory apparatus from one location to another, and that after having the service postponed for two days, the contractor finally showed up with a flat-bed truck in inclement weather to perform this job involving delicate equipment worth several hundred dollars. The crew sent to do the job were manhandling this equipment in stevedore fashion and with any other alternative the Alaska Communications System would have dismissed the truck and helpers and performed the job otherwise. Under the circumstances, however, they assigned two of their own officers to supervise the job, which required the better part of a day. In this instance resentment was felt by the using agency, based upon the assumption that they were entitled to the services of a competent firm who had qualified for a

(Testimony of Charles E. Street.)

contract with the Federal Government involving the expenditure of several thousand dollars annually by the various agencies. This is a proper assumption and a condition which must be created if it does not in fact exist with the present contract. Improper planning or a lack of management on the part of the contractor, inadequacy of his equipment and poor personnel are evident in each one of these transactions [245] and has been evident since the date of award, which is confirmed by the necessity of a conference meeting between representatives of this office and the contractor on August 28, 1945, as confirmed by letter of the same date in the file, as well as a similar letter of September 26, 1945, in which it was again found necessary to call attention of contractor to his failure to meet satisfactory service standards contemplated by the contract in question.

“In the operation of the Treasury-Procurement’s Regional Warehouse and Supply Center at Seattle, this office itself has been one of the most frequent users of the contract here under discussion in making large shipments from our warehouse to the various using agencies as well as from freight sidings and cars into our own warehouse. Rarely, if ever, has the contractor furnished equipment at the time it was promised, or in the size which was ordered. On many occasions it has been necessary to utilize a much larger truck than was ordered (at the rate the truck ordered would have cost) which in many

(Testimony of Charles E. Street.)

instances has complicated loading and unloading because of limited facilities. The end result has been delays and confusion with the Government frequently paying more in the long run because of these condition. Conversely, smaller trucks have been furnished when larger ones would [246] have permitted more expeditious handling of the Government's business. Here again labor crews and drivers have been usually of the poorest quality, apparently without drayage experience in most cases, with the result that many jobs cost more to perform than they would have under a well-managed operation. In some instances crews, or parts of crews, have quit in the middle of a job because they weren't accustomed to the type of work or because they were a poor caliber of men. In some instances it has been necessary to disallow or reduce amounts which the contractor intended billing because of the fact that the job was dragged out through lack of planning, poor equipment and the labor used.

“Not only does an inferior operation such as this contractor has conducted contribute to or require unnecessary expenditure of Federal funds in the performance of hauling and drayage contemplated by the contract, but it has hampered the expeditious receipt into our warehouse of urgently needed supplies required for distribution to other agencies, where the delay in receipt and resultant loss of time and confusion was more costly than the original drayage outlay.

“In December, 1945, it became necessary to move

(Testimony of Charles E. Street.)

the Regional Warehouse and Supply Center from its location at that time at 3402 Wallingford Avenue and supplemental [247] stocks at 2028 Eighth Avenue to more spacious quarters at 1518 First Avenue South. Having in mind the contractor's demonstrated lack of knowledge of transport, the poor equipment and the paucity thereof available to him, as well as recollection of the type of labor he had been able to muster on previous occasions, a separate contract for this special job was deemed desirable, not only from a standpoint of cost but from a standpoint of expeditious completion, in order that the warehouse might be in a position to honor requisitions, issue merchandise and make deliveries to the various customers—various customer agencies in the region in the shortest possible time. Since this was a highly complicated move involving the loading, transportation, unloading and floor-stacking of approximately 1200 items by numerical sequence, the management, planning and supervision of this job for its orderly accomplishment without loss of identity of stock was by no means a minor concern, but a quality which up to that time had been found to be generally lacking in our experience with the contractor, as well as in those instances reported by other agencies referred to above. Bids were therefore solicited on a job basis looking to the accomplishment of the warehouse move, with whatever management, equipment and personnel a contractor considered necessary to do the job under *under* certain specified conditions"— [248]



(Testimony of Charles E. Street.)

The Court: Now, just a moment, Mr. Evans. Will you skip the rest of the document about that incident? We have heard about that incident and I haven't learned any more in the last thousand words than I knew about it in the first hundred. Please skip further reference to that warehouse move.

Mr. Evans: Well, I can perhaps shorten this considerably.

The Court: I wish you would because it all seems so very repetitious to the Court. It seems to me like we are not developing any new information.

Mr. Evans: I would like to submit it. It is in evidence, Your Honor, and the reason I am going into it at this time is because that is, as I understand, from the file of the Treasury and a factual finding upon which he based his decision——

The Court: State the results of his finding. State the result of his finding or action. That is the main thing. You may do that in your own words based on this instance, that instance or another instance without reading long paragraphs—especially if it is already in evidence.

Mr. Evans: Very briefly it is report of factual finding of the unsatisfactory performance which was made to the file for the purpose of a permanent record, and [249] that is in evidence and was available to the Secretary of the Treasury at the time he made this decision confirming Mr. Ihlanfeldt's action.

I believe it has been called to the Court's atten-



(Testimony of Charles E. Street.)

tion once before, but in that regard there is a provision in the contract that dispute of factual findings of fact should be submitted to the Secretary of the Treasury for his decision and his decision shall be final.

Now, these are the facts which were sent to the Secretary of the Treasury.

The Court: Unless there are new incidents not touched upon by any evidence, it would seem to me a waste of time to consume any more trial time in making additional corroborative—or repeating references to the same incidents that are complained of in the record.

Mr. Evans: I can probably shorten this considerably, Your Honor, if I can have a short recess at this time.

The Court: You may take a recess. 10 minutes.

(Whereupon, a 10-minute recess was taken.)

The Court: You may proceed.

Mr. Evans: You may cross-examine.

Mr. Seering: Your Honor, at this time with the agreement of counsel I ask the Court's indulgence. Mr. Arthur Haugan, an attorney from Renton, is here and [250] counsel has agreed that if the Court permits I may put him on for just a few brief questions which are in the nature of rebuttal. It is out of order.

The Court: You may do that. The witness on the stand may be withdrawn for that purpose.

(Witness temporarily excused.)

REBUTTAL EVIDENCE FOR PLAINTIFF  
(Out of order.)

ARTHUR L. HAUGAN

called as a witness by and on behalf of the plaintiff,  
having been first duly sworn, was examined and  
testified as follows:

Direct Examination

By Mr. Seering:

Q. Will you state your name, please?

A. Arthur L. Haugan.

Q. And where do you reside?

A. Renton, Washington.

Q. And what is your occupation?

A. Attorney-at-law.

Q. Were you in the military service during the  
war?           A. Yes, sir.

Q. In what capacity?—and where? [251]

A. I served at the Seattle Port of Embarkation  
for four and one-half years ending April 10th, 1946.

Q. And what was your capacity there?

A. Starting as an assistant to the procurement  
officer, whose title was that of Purchasing and Con-  
tracting Officer for the Port of Embarkation, and  
eventually Purchasing and Contracting Officer.

Q. What was your military rank?

A. Captain during the later stages.

Q. In the course of your duties did you have any  
contacts with the Foster Transfer Company?

A. Yes, sir.

(Testimony of Arthur L. Haugan.)

Q. Did they perform work for the Seattle Port of Embarkation?

A. They did. Is that the same as the Doolittle Construction Company, may I ask?

Q. The Doolittles are connected with Foster Transfer. They have other operations,—a construction company. I may clarify that. I understand that the Port also had relations with them in connection with a salvage operation, is that right?

A. That is right. We had, as I recall, two contracts—one for hauling and one for the operation of the salvage lumber yard.

Q. Do you recall whether your hauling cartage contract was with Foster Transfer Company? [252]

The Court: Will you state yes or no?

A. I couldn't positively say whether that was the name under which the contract was signed or not.

Q. Your dealings, were they with H. L. and L. H. Doolittle?

A. Yes, sir; with the senior Doolittle and the son.

Q. And what can you tell us as to the quality and the nature of the work which was performed for the Port?

A. Their services were entirely satisfactory on those contracts.

Q. Did you have any complaints at all?

A. None that I recall.

Q. Do you recall over what period of time their services continued there?

A. My recollection is that the contract was still

(Testimony of Arthur L. Haugan.)

in effect in April 1946, when I left the service, and that it had been in effect—that or a prior contract—for, oh, a year or possibly a year and a half. I don't remember the dates very well. It was some time ago.

Mr. Seering: You may cross-examine.

### Cross-Examination

By Mr. Evans:

Q. Well, now, as I understand, you don't know whether you were dealing with the Foster Transfer Company or the Doolittle Trucking Company, is that correct? [253]

A. No, sir; that's correct.

Q. But you are certain that the contract under which you were operating with the people known as the Doolittles was in force for at least a year?

A. At least that. Now, there may have been a renewal of a contract. I think there was.

Q. Well, was that a contract made by the army?

A. Yes, sir.

Q. It was not a contract made by the Treasury Department, was it? A. No.

Q. Your own contract? A. That's right.

Mr. Evans: I move that this witness' testimony be stricken because it does not pertain to the contract in question here. It pertains to another firm doing business under another contract.

Mr. Seering: If I may ask another question——

The Court: You may inquire. The Court will reserve ruling.

(Testimony of Arthur L. Haugan.)

Redirect Examination

By Mr. Seering:

Q. Were you aware of the existence of a Treasury contract?      A. Yes, sir. [254]

Q. And were the services of a transfer company used under that contract by the Port or any of its subordinate divisions?

A. I couldn't tell you that, sir. If it was, I would have no connection with it. I administered those contracts which my office wrote as purchasing and contracting officer. If any services were rendered under a Treasury contract, I would have no connection with it.

Q. What can you tell us about the services and the costs and the rates of Foster Transfer and the Doolittles as compared to other operators?

Mr. Evans: Well, now, just a moment. I think that question should not be asked. I am objecting to it. This witness stated he knew nothing about the Foster Transfer Company.

The Court: The objection is sustained, subject to your right to further examine into his familiarity with the subject matter.

Q. (By Mr. Seering): Can you give us any further information on that?

A. My recollection is that my dealings were chiefly with the senior Doolittle. My recollection is that he operated under two or three different names, all of which, as I understood at the time, was a family business under different names or incorporations.

(Testimony of Arthur L. Haugan.)

My recollection is [255] that—of these two contracts—one was with him under one style and the other one under the other style. Foster Transfer might have been the name of one of those contracts, but my recollection is uncertain on that.

Mr. Seering: Mark these.

(Letter from Seattle Port of Embarkation to Foster Transfer Company dated February 28, 1946, marked plaintiff's Exhibit No. 7 for identification.)

(War Department Form No. 19 from Seattle Port of Embarkation to Foster Transfer Company re Contract No. TLIRP-45-TLIRP-156 marked Plaintiff's Exhibit No. 8 for identification.)

Q. (By Mr. Seering): Mr. Haugan, you are being handed Exhibit 7 for identification and Exhibit 8 for identification solely for the purpose of refreshing your recollection as to whether your dealings at the Port were with Foster Transfer Company or not. Referring to those, can you tell me what the fact is in that regard?

A. Referring to what is marked Plaintiff's Exhibit 7, that is Change Order "A".

The Court: The last word spoken I didn't understand.

The Witness: Change Order "A".

The Court: What does that mean?

The Witness: Changing the terms of a contract which is identified as TLIRP—



(Testimony of Arthur L. Haugan.)

The Court: It is an amendment to a previously existing contract? Is that or is that not the fact?

The Witness: That is the fact. And that would not be a contract which I negotiated because we had a different symbol on our contracts. The symbol TLIRP refers to some other government agency.

The Court: You may pass on to the next. Ask him another question.

Q. (By Mr. Seering): What about Plaintiff's Exhibit 8?

A. That is a delivery order, No. 113, calling for certain items of services, a contract which is—which likewise bears the symbol TLIRP-45, and again that would not be under our contract.

Q. If it is agreed that the number TLIRP-156 refers to the Treasury Contract, would you say that those are otherwise authentic documents under that contract with the Port?

A. Yes, sir; they have every appearance of being the type of documents we used.

I might explain, if you wish, that the transportation office at the Port of Embarkation ordered hauling services under our contract if they chose, or under any other contract which was available to the government, and had their own contracting officer who would issue documents such as this delivery order, Exhibit 8. [257]

The Court: Well, we are backing up about a detail here that makes the Court wonder if the importance of it justifies the amount of time. Pro-

(Testimony of Arthur L. Haugan.)

ceed and develop the witness' testimony or withdraw him from the stand.

Q. (By Mr. Seering): On the basis of those documents, and what you just said, can you now tell us whether your dealings were with Foster Transfer Company?

A. The name strikes a note of familiarity in my mind. Before I would want to say categorically yes or no, I would like to refer to our own contract.

The Court: Of course, this ought to have been done before this moment.

Proceed, counsel.

Mr. Seering: I have no further questions.

The Court: Any cross-examination?

Mr. Evans: I again move that this witness' testimony be stricken. He is talking about another contract,—another party.

The Court: The motion is denied. The Court will have in mind the question of weight to be attached to the testimony.

Mr. Evans: I have no further questions.

The Court: Step down.

(Witness excused.) [258]

END OF REBUTTAL TESTIMONY  
FOR THE PLAINTIFF

## CHARLES E. STREET

previously called as a witness by and on behalf of the defendant, resumed the stand and testified further as follows:

## Cross-Examination

By Mr. Seering:

Q. Now, Mr. Street, at the time when the Foster Transfer Company submitted the low bid for the contract with your division, you did not want to award it to them, is that right?

A. I wouldn't say that; no, sir. We had the question of whether they could do the job or not.

Q. Isn't it a fact that you were not going to award the contract to them and that you were prevailed upon to go out and look at their equipment?

A. No, sir.

Q. And you finally did go?

A. That is not a fact; no sir.

Q. You finally did go?           A. Yes, we did.

Q. And from what you saw of their equipment you thereafter awarded the contract?

A. What we saw of their equipment and what we were told about [259] rental agreements with other operators, and on the basis of personnel and all of the picture we then did award the contract.

Mr. Evans: Speak up louder. I am having difficulty hearing.

Q. (By Mr. Seering): You were satisfied with what you saw of the equipment and the facilities that they had?

(Testimony of Charles E. Street.)

A. Generally speaking, yes. As I stated before, we were also impressed with the sincerity of the men and their desire to do a good job, and we thought they could do a good job.

Q. Now, that contract took effect July 1st?

A. July 1st.

Q. During the first two or three weeks you had no difficulties at all?

A. I don't recall of any in the first two weeks.

Q. The first problem that came up was the question of some demurrage on a carload of paper on July 20th, is that right? Do you recall that?

A. I don't recall that, Mr. Seering.

Q. You do not recall the incident at all?

A. No, sir.

Q. You have no recollection of a carload of paper having been out here on the track for a week or more?

A. Yes, I heard about it, but I was not directly concerned [260] with it nor took no part in it, as I recall.

Q. And isn't it a fact that you asked Mr. L. H. Doolittle, who testified here, to absorb the demurrage on that shipment?

A. No, sir; I don't remember that.

Q. Would you deny that you did, or don't you just remember?

A. Well, that would be hard to say. I would hate to say that I didn't, but I don't recall doing it.

Q. That, of course, would have been improper

(Testimony of Charles E. Street.)

for him to do, would it not, and charge it against the government on some other transaction?

A. That would have been, indeed.

Q. Now, as to these conferences which are covered by letters of August and September, 1945, one of those conferences was initiated by Mr. Doolittle himself; that is correct, is it not?

A. I couldn't say whether that is correct or not. The one of August 26th, was not.

Q. Do you remember reading the letter—I believe it was in September—in which Mr. Doolittle requested the conference and had several requests to make of your organization for the possible improvement of the service?

A. Will you restate the question, please?

Q. Do you recall that the conference in September was initiated by Mr. Doolittle and that he made several suggestions and [261] requests of you for the purpose of improving the service?

A. Well, I was not in on that conference in September.

Q. All right. Now, were there any other conferences in regard to complaints?

A. Not conferences; no, sir.

Q. I believe you stated at the outset of your testimony that the total number of complaints you had was eight or nine.

A. I would guess now—I am trying to recollect—that that may have been somewhere in the neighborhood of it.



(Testimony of Charles E. Street.)

Q. And that was covering the period of July 1st to the termination of the contract at the end of February, 1946?

A. Mostly from the beginning of the contract through December, I would say.

Q. And during that time do you have any idea what the total number of individual jobs were that were performed by the contractor?

A. All that I know is that I heard Mr. Doolittle testify that there were between twelve and fourteen hundred jobs performed.

Q. You would have no way of verifying it?

A. We get no reports from other agencies.

Q. Does that sound as if it was a reasonable figure?      A. Well, I am unable to say.

Q. Now, do you mean to tell us that you received absolutely no complaints on the service of the City Transfer Company [262] before or after the Foster Transfer contract?

A. That is correct, Mr. Seering.

Q. Now, isn't it a fact that especially on moves of household goods you frequently get complaints?

A. We did under this contract, but not otherwise.

Q. And isn't it a fact that under all your contracts that type of service leads to complaints?

A. No, sir.

Q. You, of course, are not aware of all the instances that might occur, are you?

A. We wouldn't know unless they reported them to us.



(Testimony of Charles E. Street.)

Q. You wouldn't know?

A. Unless they reported them to us.

Q. In other words, you specifically have no knowledge of a claim on behalf of a Commander Madison against the City Transfer for the disappearance of some of his household goods when he was moved here by City Transfer—moved from Seattle?

A. This is the first time I ever heard of it.

Q. You never did?

A. No, sir, I never did.

Q. And did you ever hear of the incident of the dropping and breaking of some I.B.M. machines by City Transfer Company in a move for War Assets?

A. No, sir; this is the first time I ever heard of that. [263]

Q. Now, in regard to the Invitation, Bid and Acceptance of December 6, 1945,—that is the correct date, is it not?—covering the job on the Wallingford move?

A. That sounds correct; yes, sir.

Q. Did you furnish Foster Transfer Company with a copy of that Invitation, Bid and Acceptance?

A. No, sir; we did not.

Q. Why?

A. There were several considerations of the transaction at that time, and if you would like, I will tell you what they were. We had a question in mind, whether or not the Foster Transfer Company could do the job, because we considered it to

(Testimony of Charles E. Street.)

be a complicated job—it consisted of removing stock and relocating it and keeping it in sequence—and in the light of our own experience, and the reports we had from others, we doubted whether they could do the job. We also questioned whether there would be sufficient equipment to handle other work which they might be called upon to do the job. The other question was, whether it was proper to have the work done under the contract which is an open end contract with time one of the main factors in payment. Our job was a specific job involving a certain amount of tonnage, a certain amount of dollar value under known conditions and the contract such as we had, the open end contract with the hourly rates and the equipment rates [264] contemplated any type of service that the government or any of its agencies might require which we did not know about, whereas, in this case we knew specifically what the job was that had to be done. So all of those things were considered and it was decided that possibly—or that probably Foster Transfer would have their hands full with the contract they had and should not undertake the other contract simultaneously.

Q. And you recall the incident of my writing a letter and making a demand for that work under the existing contract?      A. Yes, sir.

Q. And whether it was you or Mr. Clark, do you recall that I had a number of telephone conversations with your office on the matter?

A. I believe that I heard that you did. I think, perhaps, they were with Mr. Clark.

(Testimony of Charles E. Street.)

Q. Mr. Clark was acting under your direction, was he?      A. Yes, sir.

Q. And in all of that conversation and correspondence never once was there any mention of the fact that Foster Transfer Company was not qualified to do this work; now, is that not true?

A. I believe that is correct, according to the correspondence. I don't know what was said in the conversations.

Q. Despite the fact that you had this history of complaints, [265] and the memorandum which was just read in which you state unqualifiedly that in practically every instance the service was inadequate, the men were late, the equipment was not satisfactory, in the negotiations on this big move never once was the quality of their service mentioned, is that correct?

A. That I wouldn't know unless it was mentioned in a conversation.

Q. The only question as to awarding that move under their existing contract that was raised by your office was the question as to whether that contract contemplated this type of a move, is that not correct?

A. And whether it could be done in approximately the time that was set up and for approximately the same amount of money.

Q. And in that correspondence you sought to make the Foster Transfer Company guarantee performance within seven days?

(Testimony of Charles E. Street.)

A. That had been discussed with them and it had been temporarily agreed that they could do it, and they said they could on the basis of the discussion.

Q. Did you read the correspondence?

A. Yes, sir.

Q. There is no guarantee of seven day performance therein, is there?

A. No, there is no guarantee, but it is stated in our [266] correspondence—or in our letter of December 14th it is stated on the basis of a verbal discussion wherein we were told that the main job could be done in seven days and with so many pieces of equipment and so many men, and so forth. It is related to that fact.

Q. You were informed that barring unforeseen circumstances they made an estimate of seven days on the Wallingford move, is that right?

A. That is correct.

Q. And, as a matter of fact, your low bidder made an estimate of nine days, didn't he?

A. That is correct.

Q. And, as a matter of fact, Foster Transfer did the job in twelve days?

A. Not according to our records.

Q. Did the Wallingford move—13; I am corrected.

A. That I cannot say.

Q. Now, you have referred to the low bid. What were the other bids on that job?

A. May I refer to the record?

A. Yes, you may.      A. Let's see, that—

(Testimony of Charles E. Street.)

Mr. Evans: That is A-11, I believe.

(Exhibit A-11 presented to witness.)

A. One of the other bidders broke his bid into two parts [267] covering the two jobs, and here are the separate figures: \$4839 for one job and \$1841 for the other portion.

Q. That is a total of \$6680 for the total job?

A. That looks approximately correct. And the other bidder, other than the Martin Transfer Company—who were low—was \$2575 and \$2150.

Q. That is \$4725. And Martin was forty——

A. \$4500.

Q. \$4500. Now, it has been testified here, I believe by Mr. Hallam, that for three days the job was set down by agreement between him and you because of the weather.

A. That is correct.

Q. You deny that?

A. I deny that; yes, sir.

Q. It has also been testified that the elevators were not operating and that that held the job up at least several days. Is that correct?

A. That is only partially correct.

Q. Well, what is the fact?

A. As I recall, one elevator was down for approximately a half a day. We had the same elevator, or another one—I believe there was only one there—that was down for two hours. Now, we did have some five minute interruptions because fuses would blow out, and things like that, but those were



(Testimony of Charles E. Street.)

the only two major breakdowns that I recall—one of approximately half a day and one of two hours.

Q. Now, as far as you know, no complaint has ever been filed by anyone against the Foster Transfer Company's bond?

Mr. Evans: I am going to object to that cross-examination. It is immaterial.

The Court: Overruled.

A. I am not sure about that, Mr. Seering. The records indicate there may have been filed something against their bond by an employee whose goods were damaged in moving.

The Court: By an employee of whom?

The Witness: An employee of the Fish and Wildlife Service.

The Court: You mean a government agency having the right to receive service under this contract; is that what you mean, or do you mean something else?

The Witness: Not quite that. This particular employee, some two years later in taking his goods out of storage, found that there was considerable damage, and we understood that this employee was filing a claim with his insurance company, which was the General Insurance Company, who in turn were going to try and get relief from the bonding company.

Q. Where were these goods stored?

A. In Chicago, I believe. [269]

Q. That is the only incident that you know of?



(Testimony of Charles E. Street.)

A. That is the only incident I know of—where the bond may have been brought into play.

Q. Now, before the cancelation of the contract in February, did you consult any of the other government agencies generally as to their experiences with the Foster Transfer Company?

A. No, sir.

Q. You are aware of the fact that a considerable number of the representatives of those agencies have indicated, as shown under the exhibits here, that the services were entirely satisfactory?

A. I have seen the list; yes, sir.

Q. You are also aware of the fact that a number of those agencies have preferred to continue the services of Foster Transfer?

A. No, that I am not aware of.

Q. Did you know that the Port is still using them?

A. No, sir; I did not.

Q. You don't know that?

A. No.

Q. Do you know that the Army Engineers are still using them?

A. No, I do not.

Q. You made no effort to find out the experience of those agencies? [270]

A. We did not make a survey.

Q. As a matter of fact, about the only work that your agency directly had for Foster was this Wallingford move?

A. Plus certain other jobs that were done.

Q. And on that Wallingford move, I believe you said that you were out there specifically to watch the quality of their services?

(Testimony of Charles E. Street.)

A. Not specifically, but with that being one of my jobs.

Q. And that was brought to a head by the fact that they had insisted upon the award of this work under their existing contract?

A. No, I don't believe that is correct.

Q. Now, about those disallowances to which you testified, is it true that the billings of the Foster Transfer Company are based on Exhibit 5, which are work tickets signed by your representative in each instance?

A. It appears that is the case now.

Q. So that in every case, even though you later questioned the item, your representative on the job certified the correctness of that work ticket?

A. That was not the intention, Mr. Seering. We had no agreement that we would keep their time and report on the number of hours they worked, and so forth. It was only an indication that part of the job was being done on that date. It was not a timekeeping proposition. [271]

Q. Well, there is no purpose, then, in his signing that work ticket at all?

A. No. It indicates that there were people working, yes, but not eight hours or seven, or something else. These people who signed these were workers. They were not timekeepers.

Q. Isn't it the practice generally for the shipper to sign and okay a work ticket such as this?

A. No, I don't think so.

(Testimony of Charles E. Street.)

Q. Isn't it the practice of the government on work such as this to have supervision?

A. We didn't contemplate it on the job.

Q. Now, you talked about this shelving, about which we heard something yesterday. That refers to the shelving that was moved in from Auburn, I believe.

A. Auburn or Renton. I don't recall which.

Q. It was loaded by the War Assets Administration out there, is that right?

A. That I don't recall.

Q. And you said that Mr. Doolittle didn't seem to know what to do about getting it off of there. Now, what would you have done to get it off?

A. I am not in the trucking business.

Q. Well, you have set yourself up in this instance to judge as to his incompetence in getting it off. Now, you said [272] he didn't seem to know what to do and finally Mr. Sbinden authorized the dismantling of the shelves. Now, as a matter of fact, wasn't that the only way to get them off?

A. I don't think it was.

Q. And you refused to permit taking them apart causing all that delay, isn't that right?

A. Well, that I can't say.

Q. Now, also, in your memorandum you referred to the Alaska Communications System having requested a closed van and having received an open van. Now, the fact there was that they did not request the closed van; that refers to the instance of of lift-gate request, doesn't it?

(Testimony of Charles E. Street.)

A. I am not sure that does. That, in my opinion, is a separate transaction.

Mr. Seering: No further questions.

### Redirect Examination

By Mr. Evans:

Q. At the time when you went to the Foster Transfer Company to interview them at the beginning of this contract—before the contract was let—did you actually inspect their equipment or did you merely take the list?

A. We merely took the list. There wasn't, as I recall, but one or two trucks available to be seen, but we were assured that the equipment was available as represented by the [273] list; also, that they had operating agreements with some 75 other trucking operators for the acquisition of additional equipment that might be required for peak loads or unexpected situations. There was no equipment available at the time.

Q. Then you actually saw, perhaps, only one or two trucks?

A. As I recall, that was the case.

Q. Now, in regard to this insinuation that you told Mr. Doolittle to charge the demurrage off on other bills to the government, have you ever in your life done anything like that? A. No, sir.

Q. If you had ever done anything like that, would you remember it?

A. I think I would; yes, sir.

Q. On that basis, can you state now whether

(Testimony of Charles E. Street.)

or not you ever told Mr. Doolittle to absorb that demurrage in some other contract?

A. I don't think that I did. I don't believe that I would have done that.

Q. Now, as I understand your cross-examination, you state that there was some eight or nine complaints received from other agencies. There were also other complaints from your own agency, is that correct?

A. Such as Mr. Winder recited this morning.

Q. And from your own observation?

A. No, I would not have seen that directly. It would have come to me through channels.

Q. Well, some of these observations that you made you saw yourself?

A. In connection with the warehouse move.

Q. I will ask you whether or not you considered the warehouse move as being one that required special and different equipment from that required under the general contract?

A. We thought that perhaps it would in the way of trucks, that is, small warehouse trucks and other equipment not normally contemplated in a general drayage contract.

Q. Now, where was the bulk of the merchandise to be moved in this move?—at Wallingford or 8th Avenue?

A. Wallingford.

Q. About what percentage would you say was at each place?

A. I would break it down roughly as about 65 and 35, or maybe 60/40.



(Testimony of Charles E. Street.)

Q. From your investigation as to the elevators breaking down down here on 1st Avenue, do you have any information as to the cause of those elevators breaking down?

A. I was told by our man who was at that end, Mr. Sbinden, that part of the difficulty, or most of it, was overloading; that he had cautioned the men about putting the rated capacity on and that they continued to load it up with [275] pallet boards and other merchandise to the place where she wouldn't take it and broke ropes and cables and wheels and various things like that. At the time of this 4-hour delay, it was quite a break-up.

Q. Whose men were these overloading the elevators? A. It was the contractor's operation.

Q. Now, in regard to this list of people who stated their services were satisfactory, have you made any investigation as to whether or not those people were persons who were authorized to make such a commitment on behalf of the government?

A. We have; yes, sir.

Q. Were those people in a position where they were so authorized?

A. Some of them were not.

Mr. Evans: No further questions.

Mr. Seering: I have no questions.

The Court: You may step down.

(Witness Excused.)

The Court: Call your next witness.

Mr. Evans: I will call Mr. Clark. [276]



## G. KENNETH CLARK

called as a witness by and on behalf of the defendant, having been first duly sworn, was examined and testified as follows:

## Direct Examination

By Mr. Evans:

Q. Will you state your full name, and spell your last name for the reporter, please?

A. G. Kenneth Clark, — C-l-a-r-k.

Q. Where are you now employed, Mr. Clark?

A. U. S. Treasury, Bureau of Federal Supply.

Q. In what capacity?

A. As Assistant Chief, Purchase Division.

Q. How long have you been in that capacity?

A. About two years.

Q. How long have you been with that particular agency?

A. Since 1944—November.

Q. Now, I will ask you whether or not since about October, 1947, you were in a position where if any complaints were received on the drayage contract they would have come to your attention?

A. Yes, I was,—as assistant chief of the division.

Q. I will ask you whether or not you have received any complaints on the drayage contract which has been in force since about October, 1947, which is of a similar nature to the one Foster had?

A. No, I have not.

Mr. Evans: Now, in order to shorten this testi-

(Testimony of G. Kenneth Clark.)

mony and comply with the Court's wishes, Mr. Clark could corroborate some of Mr. Street's testimony in regard to these conferences. I will not go into it any further unless counsel wants to cross-examine on it.

Mr. Seering: No.

Mr. Evans: If your Honor has no further questions in regard to that, I will not interrogate this witness further.

The Court: I do not wish to inquire.

Mr. Evans: No further questions. I would like to ask that Mr. Clark be excused. I understand that he has an appointment at 4:00 o'clock.

Mr. Seering: I have just a question or two.

The Court: You may inquire.

#### Cross-Examination

By Mr. Seering:

Q. Do you recall your telephone conversations with me, Mr. Clark, on the occasion of the Wallingford move and our demand that the work be proffered under our existing contract?

A. I recall that we had some conversation on the phone.

Q. And it is a fact, as set forth in your letter, that the [278] chief question raised in that discussion was as to the propriety—or rather as to whether the existing contract contemplated this type of a move on a large scale?

A. I believe that is correct. Could I add to that?

(Testimony of G. Kenneth Clark.)

Q. Yes.

A. We believed that our existing contract did not require that the Foster Transfer Company be used on that kind of a move. We weren't too satisfied with their performance by reason of these complaints and—but we didn't want to bring the thing to an issue if it could be avoided or handled in a more or less gentlemanly fashion by excluding Foster Transfer from the move on the grounds that it wasn't contemplated under the existing contract and letting a separate contract for it. That is what we had in mind, I am sure.

Q. You did not want to exclude them from performing the work, you said?

A. We did. We didn't want them to perform the work because we were not satisfied with their service under the contract. We therefore wanted to get out a separate bid for it, but we didn't want to stir up any trouble with the contract in that manner.

Q. And in all your discussions with me, and in your correspondence, you never raised a single question as to the quality of the service or to their ability to perform? [279]

A. I don't recall that I did.

Mr. Seering: That is all.

Mr. Evans: No further questions.

The Court: You may be excused.

The Witness: May I be excused?

The Court: Is there any objection to the witness' request that he be excused?

Mr. Seering: No objection.

The Court: You are so excused.

(Witness Excused)

The Court: Call your next witness.

Mr. Evans: Mr. Ihlanfeldt, please.

WILLIAM B. IHLANFELDT

called as a witness by and on behalf of the defendant, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Evans:

Q. Will you state your full name? And spell your last name for the reporter, please.

A. My name is William B. Ihlanfeldt, I-h-l-a-n-f-e-l-d-t.

Q. Where are you employed, Mr. Ihlanfeldt?

A. The Bureau of Federal Supply. [280]

Q. In what capacity?

A. As manager.

Q. Over how large an area does your jurisdiction extend?

A. Well, the four northwest states.

Q. Which ones?

A. Idaho, Montana, Oregon and Washington, and the Territory of Alaska.

Q I will ask you whether or not your agency

(Testimony of William B. Ihlanfeldt.)

used to be called the Procurement Division of the Treasury Department?

A. That is right.

Q. I will ask you whether or not it was your decision to terminate the contract with the Foster Transfer Company?

A. It was.

Q. I will ask you whether or not your decision to take that action was based on reports made to you by your subordinates?

A. That is true.

Q. Referring to Exhibit A-6, that portion which is from page 13 approximately on, I will ask you whether or not all the information contained therein was available to you at the time you made your decision?

A. It was.

Q. I will ask you whether or not that file is the file of your office which was furnished to the Treasury Department in connection with the appeal made by the Foster Transfer [281] Company?

A. It was.

Q. Now, you have heard the testimony, I believe, of Mr. Street.

A. Yes, sir.

Q. Now, in order to shorten this, I will ask you whether or not you were familiar with the substance of what he testified to here in regard to these complaints?

(Testimony of William B. Ihlanfeldt.)

A. I was, and I am.

Q. And I will ask you whether or not it was on the basis of those complaints and the information which he gave you, as he testified to here, that caused you to make the decision that it was necessary to terminate this contract?

A. Yes, sir.

Q. I will ask you whether or not you considered it within your discretion to exercise the right of the Government under paragraph 21 of the Special Conditions of the contract to terminate the contract?

A. Yes, sir.

Q. I will ask you whether or not in your opinion, and in your capacity as manager, you could in good faith keep the contract in force, considering your duties and responsibilities?

A. On the basis of the information that was made available to me, I felt I would be derelict in my duty if I were to [282] continue the contract.

The Court: Did you participate in the decision of how much notice should be given to the transfer company of cancellation or intention to cancel?

The Witness: Yes.

The Court: Do you recall why more notice was not given of the effective date of cancellation before the occurrence of that date?

The Witness: Yes, I recall. I had a talk with Mr. Street and others on my staff who informed me that under the terms of the contract we could terminate without notice. They referred to a stipu-



(Testimony of William B. Ihlanfeldt.)

lation within the contract which was to the effect that the government could terminate on the basis of just cause, or something of that sort,—I have forgotten the language—and in determining—or making that decision, I took into account the fact that we had given the contractor, in my opinion, sufficient time within which to demonstrate his capacity to perform the work.

Q. And in that regard did you take into consideration the statement in the contract that it could be canceled at any time——

A. I am sorry, I don't follow you.

Q. I will rephrase the question. This particular provision of the contract provides that the government reserves the [283] right to cancel the contract at any time for what it deems sufficient cause. I will ask you whether or not in your administrative capacity in canceling this contract you took into consideration whether some notice should be given?      A. Yes.

Q. I will ask you if it was your decision to give him until the first of the month, or until the last day of February, whichever it was?

A. If that is what we did, yes.

Q. I will ask you whether or not you ever had a conversation with Mr. Doolittle on or about September 26, 1946?      A. Yes, I did.

Q. I will ask you whether or not any discussion took place at that time with regard to the prices which were being charged by the Foster Transfer Company?      A. Yes, there was.

(Testimony of William B. Ihlanfeldt.)

Q. And was that with the young Mr. Doolittle or the elder Mr. Doolittle?

A. It was the elder Mr. Doolittle.

Q. Now, I will ask you whether or not he was representing the Foster Transfer Company at the time he was there?           A. He was.

Q. What if any complaints did he make about the prices being charged? [284]

A. Well, he said approximately this: "Mr. Ihlanfeldt, I am losing money on this contract and I wonder what you can do to help me." And my question was: "To what do you attribute your losses?" And he said that there was a great preponderance of small shipments—up to a thousand pounds, or less than a thousand pounds—of household goods and other small packages and that he couldn't come out, as he put it, on the contract and asked me whether there was any way in which I could amend that contract to help him. And at that time I recall I asked my secretary to get the complete file and the previous bids—or the bids that were considered at the time of the original award to Foster Transfer, and I determined to his satisfaction, because I referred the file to him, that there were other bidders who had—at least one other bidder who had bid the same price for the small shipments as had Foster Transfer Company, and I told him that I could see no way by which I could grant him any relief.

Q. I will ask you whether or not he appeared

(Testimony of William B. Ihlanfeldt.)

to be serious in his complaint that he wasn't making any money on the contract?

A. Yes, indeed.

Q. Now, as a result of that conference you wrote the letter of September 26, 1945, which I believe is on page 38. A [285] copy of it is on page 38 of that file there before you. A. Yes.

Q. Now,——

Mr. Evans: I do not want to bore the Court with more reading. I believe portions of this contract have been read before.

The Court: Yes. I think you can call the Court's attention to it in the course of your arguments.

Mr. Evans: I will, Your Honor. I will avoid reading this at this time other than to state that it makes reference to the complaint about not being able to make any money.

Q. (By Mr. Evans): Now, I will ask you whether or not any complaints have been received by your office on the performance of other contractors on contracts such as this since the Foster contract was terminated?

A. None has come to my attention.

Q. I will ask you whether or not—if any complaints had been received, whether or not you would have been informed?

A. Definitely. That is the policy of my office.

Q. I will ask you whether or not the contractor who had this same type of contract prior to the Foster Transfer Company caused any complaints to be made to your office? A. None. [286]

(Testimony of William B. Ihlanfeldt.)

Q. And how long have you been in the capacity where you would have known about those complaints?

A. Since March, 1944.

Q. I will ask you whether or not in arriving at your decision to terminate this contract you gave any consideration to the added cost to the government in procuring a new contract?

A. Indeed I did. It is a costly job, this business of advertising and consideration of bids, the preparation of abstracts, the ultimate decision to award the contract, all the information matter that attends the awarding of a contract. The notification, as in this case, went out to some 80 or 90 federal agencies and I wanted at all cost, or any reasonable cost, to avoid cancellation, and that was the subject of my discussion on September 26th when I talked to Mr. Doolittle.

I urged him at that time to do whatever he could to eliminate the cause of these complaints, and told him also that it wasn't only this contract that we were talking about but that since he was in the transfer business, the hauling business, it was entirely possible that the government might have and would have additional hauling or drayage contracts of this or of some other nature in the future and that I wanted him to be successful in this case so that he might be given consideration and an [287] opportunity to bid on other government business in the future. He said he understood that, and he was a most courteous and gentlemanly sort

(Testimony of William B. Ihlanfeldt.)

of fellow. He seemed very cooperative and responsive to suggestion and I believe he was—he tried sincerely to do a better job, or that he would attempt to. He left me with that impression.

Q. I will ask you whether or not the performance—the actual performance of the Foster Transfer Company showed any improvement?

A. It did not.

Q. Now, I will ask you whether or not the cost of letting a new contract in any way deterred you from your decision to cancel this contract?

A. I gave it considerable thought; yes, sir. But I felt that it was in the interest of the government and the American taxpayer, the United States taxpayer, to take the action I took.

Q. Now, I will ask you whether or not there is any policy followed by your office to favor small businesses rather than large firms?

A. Generally that is the attitude and policy of the Director of the Federal Bureau of Supply, and it is obviously our attitude as well.

Q. I will ask you whether or not at the time of the award of this contract, June of 1945, you gave any consideration to [288] that policy in awarding this contract to Foster Transfer?

A. Yes, I gave it thought. I didn't—I don't think it was a major consideration. The important facts were that my boys, Mr. Street and others, assured me that on the basis of their discussions with Mr. Doolittle, his apparent sincerity, his promises



(Testimony of William B. Ihlanfeldt.)

of equipment and labor, and a labor pool, and also in view of the fact that his was the low bid, I had no concrete evidence with which—upon which to base any other decision. But I did think about this matter of favoring the small dealer or the small operator whenever other conditions are equal. That is still our policy.

Mr. Evans: You may cross-examine.

### Cross-Examination

By Mr. Seering:

Q. Most of the information on which your action was based came to you through your subordinates?      A. That is true.

Q. You, yourself, did not directly go out on the job?      A. No, sir.

Q. And did not have direct information. Now, at the time you canceled this contract you were under the impression that you had no obligation to give any reasons for your cancellation, is that correct? [289]

A. That is true, but——

Q. And you so stated in your answer to me?

A. That is true.

Mr. Seering: That is all.

### Redirect Examination

By Mr. Evans:

Q. As I understand, you did write Mr. Seering a letter and gave him the terms under which you were canceling the contract?



(Testimony of William B. Ihlanfeldt.)

A. Yes. I said that under our interpretation we had to give him no information, but that I was very glad to do it. Mr. Doolittle and his company were always apparently sincere and cooperative and I thought it was the gentlemanly and right thing to do, and we did that.

Mr. Evans: No further questions.

Mr. Seering: No further questions.

The Court: You may step down.

Call the defendant's next witness.

(Witness excused.)

Mr. Evans: I call Mr. Walsh. [290]

### JEREMIAH J. WALSH

called as a witness by and on behalf of the defendant, having been first duly sworn, was examined and testified as follows:

#### Direct Examination

By Mr. Evans:

Q. Will you state your full name, please?

A. Jeremiah J. Walsh.

Q. Where are you employed, Mr. Walsh?

A. City Transfer and Storage Company.

Q. In what capacity?

A. As the accountant.

Q. Now, in such capacity I will ask you whether or not you are familiar with the contract between the City Transfer Company and the government, particularly the Bureau of Federal Supply?

(Testimony of Jeremiah J. Walsh.)

A. Well, I am familiar with several phases of the contract; not all of the contract.

Q. I will ask you whether or not you are familiar with the bookkeeping and accounting part of that contract?      A. Yes, I am.

Mr. Evans: I think I might be able to stipulate with counsel and save considerable time.

The Court: You may confer.

Mr. Evans: May I have this marked, please?

(Summary of Total Billings by City Transfer Company made under contract with U. S. Treasury Dept., March 1, 1946, to June 20, 1946, marked Defendant's Exhibit #3 for identification.)

Mr. Evans: It will be stipulated between opposing counsel and myself that Defendant's Exhibit A-13 is a summary of the business done by the City Transfer Company between the dates of March 1, 1946, and the last day of June, 1946, under the contract which would have been Foster's had it not been canceled and that the figures thereon are taken from the books and records of the City Transfer Company and prepared in this form so that we wouldn't have to go through these books.

May it be so stipulated?

Mr. Seering: It is so stipulated.

Mr. Evans: And that it may be admitted in evidence,—the summary?

Mr. Seering: Yes.

The Court: Do you offer A-13 now?

(Testimony of Jeremiah J. Walsh.)

Mr. Evans: I offer A-13.

The Court: Defendant's Exhibit A-13 is now admitted.

(The summary heretofore marked Defendant's Exhibit A-13 for identification was received in evidence.)

Q. (By Mr. Evans): Now, Mr. Walsh, are you familiar with the contract rates under the contract which your company has with the Treasury Department as compared with the [292] rates of other customers of City Transfer? A. Yes.

Q. I will ask you to state whether or not the rates which are charged to the government under your contract are approximately equal to, less than, or greater than the same prices which you would charge other individuals.

A. Less than the same price we would charge our normal business.

Q. In other words, the government gets a break on the prices?

A. Well, it is competitive bidding and, of course, it is lower.

Q. Now, I will ask you whether or not during the year 1946 the City Transfer Company made any money?

A. In the year 1946, the City Transfer Company lost approximately \$1500.

Q. I will ask you whether or not you have with you a report put out by the Department of Transportation, State of Washington, in regard to prof-

(Testimony of Jeremiah J. Walsh.)

its and losses of transfer companies in the State of Washington?      A. Yes, I have.

Q. Do you have it up there with you?

A. It is back in the seat.

Mr. Evans: May I move back and get it, Your Honor?

The Court: You may do that.

Q. Now, what is the name of that document which you have there? [293]

A. The name of this is Statistics of Class I Common and Contract Motor Carriers of Property for the year 1947. It is published by the State of Washington, Department of Transportation, the Accounting Section, Olympia, Washington.

Q. I will ask you whether or not in that report there is a summary of the percentage of profit made by all the carriers that are in that class in the State of Washington?

A. Yes, there is.

Q. Will you turn to that page, please?

A. Yes, sir.

Q. Under what classification and types of work is that listed? I believe there are three, aren't there?

A. Yes. General freight carriers (a). Local cartage carriers and household goods carriers.

Q. What percentage of profit is shown under general freight?

The Court: Can you not specify the thing that is material here? And since this man is probably put on the stand as an expert, use conclusions and

(Testimony of Jeremiah J. Walsh.)

be as brief as possible. I think I will have to advise counsel on both sides that all the time that is consumed from now on in the trial of this case will have to be deducted from the time available for argument.

You may proceed. [294]

Mr. Seering: I object to the question on the ground that profits of motor carriers in general has no bearing here. We do not know the factors involved in the returns there. I do not see that it proves any issue in this case at all.

Mr. Evans: Your Honor, here is a report put out by the State as to the profits and losses, and their percentage, of all the carriers under Class I in the State of Washington. I believe this is competent evidence to determine the anticipated profits which this company might or might not have made during the ensuing term of their contract and I believe it is evidence the Court can take into consideration as to the percentage of profit.

The Court: Well, isn't there some shorter way of getting at it?

Mr. Evans: Well, I believe this is going to be very short, Your Honor. It is just going to be a matter of giving three figures and we will be through.

The Court: Very well. The objection is overruled.

Q. (By Mr. Evans): Under general freight what was the percentage of profit in 1947?

The Court: That is if general freight is involved

(Testimony of Jeremiah J. Walsh.)

here. Do both sides agree that any activity of this plaintiff comes in that category? [295]

Mr. Seering: We agree.

The Court: All right.

A. In 1947?

Q. Yes.

A. Net carrier income, before income taxes, 6.01 per cent.

Q. And "Local Hauling," the next column there, what is the percentage?

A. In 1947 the percentage was 0.46.

Q. And as to the "Household" column?

A. 0.10.

Q. I will ask you whether or not you have the report for 1946?

A. This is the comparison. We have also 1946 in here.

Q. The figures which you have read are for 1947? A. Yes.

Q. Can you give me the same three figures for 1946?

A. Yes. Under "General Freight Companies" the figure is 3.19. Under "Local Cartage Carriers" the figure is 3.37. And under "Household Goods Carriers" the figure is 2.62.

Mr. Evans: No further question.

Mr. Seering: I have no questions.

The Court: You may step down. Call your next witness.

(Witness excused.) [296]



Mr. Evans: I believe I am ready to rest now, Your Honor. If I may have just a moment.

The Court: You may. The Court will be at recess for five minutes.

(Whereupon a five-minute recess was taken.)

The Court: You may proceed.

Mr. Evans: The defendant rests, Your Honor.

The Court: The plaintiff may proceed.

Mr. Seering: Mr. Conley.

## REBUTTAL EVIDENCE FOR THE PLAINTIFF

### JOHN E. CONLEY

called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

#### Direct Examination

By Mr. Seering:

Q. Will you state your full name, please?

A. John E. Conley.

Q. And where do you reside?

A. Seattle, Washington.

Q. By whom are you employed?

A. Port of Embarkation.

Q. By whom were you employed prior to that?

A. War Assets Administration. [297]

Q. And did you work under—I believe it was Mr. Smith who testified here today?

A. I didn't see Mr. Smith, but I worked under Mr. Smith.

(Testimony of John E. Conley.)

Q. That is Erving Smith? A. Yes, sir.

Q. And what were your duties?

A. I was chief of the office, Service Division, which had to do with the moving of equipment and various service functions.

Q. And Mr. Smith was your supervisor?

A. He was my boss, yes.

Q. As between the two of you, who had direct contact with the transportation work?

A. I had direct contact with the work actually being done.

Q. And did you have experience with the work performed by the Foster Transfer Company?

A. Yes, sir.

Q. Tell us about the quality and character of the service furnished by that company to your agency.

A. Well, they did just one job that I recall vividly. It was a large job. We moved from 2005 5th Avenue to the Textile Tower and at that time they did a good job.

Q. What was the nature of that job?

A. Well, it was moving our furniture, I.B.M. equipment, et cetera, to the Textile Tower from 2005 5th Avenue. [298]

Q. Was that what would be regarded as a difficult move? A. Well, I would say yes.

Q. And it was handled well, was it?

A. Yes.

Q. Do you have any experience with—or did

(Testimony of John E. Conley.)

you have any experience with the City Transfer on the moving of any I.B.M. machines?

A. Yes. They moved our equipment later on.

Q. Did they have any accident in that connection?

A. They dropped one machine at one time.

Q. Is there anything else about the quality of their service that you can recall?

A. No, I believe not.

Q. Was there adequate supervision furnished by the company?

A. On this job that I explained, yes. I was on one end of the job and Mr. Hallam was on the other end and we stayed right with it until we finished.

The Court: What was the address from which that move was made?

The Witness: Sir?

The Court: Was it 2005 5th Avenue from which you moved?

The Witness: Yes, sir.

The Court: What building is that? If you know.

The Witness: It originally was the Wilson Business [299] College building.

The Court: Is it across from any other well known business establishment?

The Witness: Yes, sir. It is across the street from the Benjamin Franklin Hotel.

The Court: Diagonally across.

The Witness: Diagonally across.

The Court: Thank you.

(Testimony of John E. Conley.)

Proceed.

Mr. Seering: You may examine.

Cross-Examination

By Mr. Evans:

Q. You say you were at one end? A. Yes.

Q. Which end were you on?

A. The Textile Tower end the biggest majority of the time.

Q. Are you a personal friend of Mr. Hallam?

A. I know the gentleman.

Q. Mr. Smith was your superior?

A. Yes, sir.

Q. And you were not at the moving end all the time, were you? A. No, I wasn't.

Q. So you would have no knowledge of what was going on there? [300]

A. Yes. I was going back and forth. I was expediting the job. That was a part of my job.

Q. How long did it take to make that move?

A. Well, roughly—I don't recall. I might say 10 or 12 hours. I don't recall exactly.

Q. Was it necessary for the government to have a man on the job to expedite the services of a contractor?

A. No, I wouldn't say that it was necessary to have a man there.

Q. Well, then, why were you expediting it?

A. I probably used the wrong word. I was seeing that our organization was ready to go to work the following morning.

(Testimony of John E. Conley.)

Q. Well, now, isn't it a fact that the move was supposed to be made on August 20th starting at 8:30 and the trucks didn't show up until 2:30 on that day? A. I don't recall that.

Q. Do you recall the date of the job you are referring to? A. I don't recall the date.

Q. You don't know whether it was the same job Mr. Smith previously referred to or not?

A. No, I do not. I didn't hear Mr. Smith's testimony.

Mr. Evans: No further questions.

Mr. Seering: That is all.

May the witness be excused? [301]

Mr. Evans: I would also like to ask that Mr. Walsh be excused.

The Court: Any objection?

Mr. Seering: No objection.

The Court: Each of those persons may now be excused from further attending this trial—Mr. Walsh and Mr. Conley.

Mr. Seering: I will call Mr. Browne.

CLARENCE BROWNE

called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Seering:

Q. Will you state your full name, please?

A. N. Clarence Browne.

(Testimony of Clarence Browne.)

Q. And where do you reside?

A. Seattle, Washington.

Q. What is your occupation?

A. I am a salesman at the present time.

Q. During the year 1945, and early 1946, what was your occupation?

A. I think that was the date in which I was employed by the Lend Lease Division of Treasury-Procurement.

Q. And what were your duties in connection with the Lend [302] Lease Division of Treasury-Procurement?

A. Well, I had charge of various sections; one was the storing and the traffic pertaining to the handling of freight—general freight that came under the Lend Lease operation.

Q. As such did you have contact and first-hand experience with the transportation services that were furnished the department under its several contracts?      A. That is right.

Q. Did you in the course of your duties become acquainted with and have experience with the Foster Transfer Company?      A. Yes.

Q. When did you first have contact with them?

A. I can't be sure of the dates. It was during that period in which I was employed by the Treasury. We used them at various times on the picking up and the storing of UNRRA clothing and so forth.



(Testimony of Clarence Browne.)

Q. Do you recall an incident of some demurrage on a shipment of paper?

A. I don't recall what the commodity was now, but we were called by the railroad stating that there was a car on which demurrage was piling up and asked if we might do something to expedite it, or thought that it might be under our jurisdiction, but it was not.

Q. It was not? [303] A. That is right.

Q. What did you do in regard to that matter?

A. I notified—I think probably it was Mr. Clark who would handle that particular phase of it.

Q. Did you have a chance to observe the quality of service rendered by Foster Transfer Company?

A. I did on several occasions.

Q. I didn't get the last part.

A. I did on several occasions.

Q. And tell us, if you will, what your observations were as to the quality and the character of the service rendered.

A. From my experience it had been very satisfactory.

Q. Did you have any complaints at all?

A. No.

Q. Were you familiar and did you have any contact with the move from Wallingford which has been testified to here?

A. I was asked to go with Mr. Clark and survey and give him my ideas as to what would be necessary in handling the move, the amount of equipment and the number of hours that would be required

(Testimony of Clarence Browne.)

to do it, and the number of men; just in an advisory capacity.

Q. Who asked you to do that?

A. I don't remember. I think it was Mr. Clark.

Q. And did you do that? [304] A. I did.

Q. Did you form an opinion based on your experience as to what equipment was necessary and what time would be required to make the move?

A. I did.

Q. Did you observe the performance of that job for any time?

A. No, only on the start. I did some when they moved the other part of it—not the Wallingford part.

Q. Which part is that?

A. That was the one where they moved from 8th and Lenora—that part that was stored in the basement.

Q. You said you observed the start. How much of that did you observe?

A. Oh, about the first day, I would say.

Q. And how much of the Lenora move did you observe?

A. Well, I watched that almost—intermittently until it was finished.

Q. Over what period of time did that extend?

A. I don't recall.

Q. Can you give us any approximation?

A. It would just be a guess. I think it was around probably 10 or more days.

(Testimony of Clarence Browne.)

Q. And from what you observed, what can you tell us as to the quality of the work done by Foster Transfer in handling those moves? [305]

A. From what I saw, I would think it was average.

Q. How did their service compare with other trucking companies with which you had dealings?

A. They were—their service was better in this respect, that they could give us more prompt service than the others. Aside from that, the handling and all would be the same.

Mr. Seering: You may examine.

#### Cross-Examination

By Mr. Evans:

Q. In what capacity were you working at the time that you were observing this move?

A. I had been asked to confer with Mr. Clark.

Q. Who asked you? A. Mr. Clark.

Q. Who were you working for?

A. I was working under Mr. Ihlanfeldt's Lend Lease operation, but I was quite frequently called on matters of transportation—even though it was in another department.

Q. And, as I understand, you did not work in the same department that Mr. Street worked in?

A. That is right.

Q. That is right, you didn't, or that is right, you did? A. I did not work for Mr. Street.

Q. How much interest did you have in the Foster Transfer [306] Company? A. None.

(Testimony of Clarence Browne.)

Q. At any time have you had any interest?

A. None.

Q. Or in any of the Doolittle operations?

A. None.

Q. Who are you working for now?

A. Myself.

Q. I understood that you were a salesman.

A. I have a water proofing material.

Q. Well, do you have a store or a business or do you manufacture?

A. Yes, at 2705 1st Avenue, under the name of Cretite Sales, Incorporated.

Q. You are the proprietor of that business?

A. Yes, sir.

Q. What was your estimate as to how long this job should take?

A. If certain conditions were met, it could have been done approximately in seven or eight days.

The Court: You should keep your voice raised, Mr. Browne. Sometimes it falls so that I do not distinctly understand every word you speak.

Mr. Evans: I did not hear that last answer.

(The last answer was repeated by the reporter.) [307]

The Court: Which job now are you referring to?

The Witness: The Wallingford job.

Q. (By Mr. Evans): How long in your estimation would it have taken to perform the Lenora Street move—from Lenora Street down to 1st Avenue?

A. About the same.

Mr. Evans: No further questions.

(Testimony of Clarence Browne.)

Redirect Examination

By Mr. Seering:

Q. What were those conditions?

A. That if they could keep the material flowing to the warehouse in which they were moving so that they could shuttle the trucks, they could accomplish the job within that time.

Q. And whose responsibility was that—keeping the material flowing?

A. I don't know that. I just merely suggested that if they had a certain amount of men, and I was not concerned with whose men they were.

Q. Now, were you familiar with the question as to whether this job was held up by weather or by an elevator failure?

A. I did hear that they had some elevator trouble which slowed them up.

Q. What about the weather? [308]

A. I don't recall.

Mr. Seering: That is all.

Mr. Evans: No further questions.

The Court: You may step down.

(Witness excused.)

Mr. Seering: I call Mr. Hallam.

S. W. HALLAM

a pervious witness for the plaintiff, and having been previously sworn, resumed the stand and testified further as follows:

(Testimony of S. W. Hallam.)

Direct Examination

By Mr. Seering:

Q. Mr. Hallam, did you have any experience with the demurrage incident that has been referred to?

A. No, sir.

Q. Did you have any experience with the actual moving of the paper—the shipment of paper?

A. Yes, sir.

Q. What were the facts in regard to that?

A. The facts were that we went out to move the paper and we arrived at the car and the paper was all sealed in a big hardwood box—about half the car was sealed and banded—and after we broke into this hardwood box, why, the paper was all in small packages and that was why it took so long [309] to handle.

Q. And did you work overtime to get that out?

A. We worked overtime but didn't charge overtime.

Q. Now, on these work slips on the Wallingford job particularly, what is the situation as to government representatives signing those slips? What is the practice?

A. Well, the practice on all hauling, whenever a truck driver delivers anything he has to have a signature to show that he has done that, and in certain cases it is a receipt for the merchandise; and on a job requiring time, that is, based on time, it is authentication of the time—that is not only for the government, but for everybody.



(Testimony of S. W. Hallam.)

Q. It is for your own record?

A. Yes, to stop the trucking company from just writing out bills promiscuously.

Q. Now, have you checked your records to ascertain as well as you can the length of time consumed on the Wallingford job and that other one?

A. As well as I could; yes, sir.

Q. And what was the time as well as you can ascertain from your records?

A. I find we took 27 days for both jobs.

Q. Break that down.

A. Well, part of the time we were working on the Wallingford job we were also working on the 8th and Lenora job, as [310] our records show.

Q. How long did the Wallingford job take?

A. I would say about 13 days.

Q. Now, what was the fact with regard to whether the job was held up by weather?

A. It is my recollection—now, whether I am right or not I don't know—but it is my recollection I talked with Mr. Street just prior to Christmas when we had two very bad days of weather and that we agreed we wouldn't work those two days.

Q. What is the fact with regard to the performance of the elevator?

A. That I don't know for sure because I wasn't there.

Q. Now, referring to the incidents that have been cited here by the witnesses for the government, taking them in order, the incident testified to by Mr. Mac-

(Testimony of S. W. Hallam.)

Innes of the damage done at the apartment by your men, what do you know about that?

A. That is correct.

Q. And what was done by you about it?

A. I went out to Mr. MacInnes and settled the claim.

Q. From your experience with the company for which you are presently employed, and your experience with Foster Transfer Company, can you say, is that a happening of some frequency? [311]

A. That is not an uncommon occurrence.

Q. Now, do you recall the incident testified to by Mr. Schwandt of the Japanese incident—about the trucks and helpers?

A. I recall his testimony, yes.

Q. Do you, yourself, recall the incident?

A. No, sir.

Q. Do you recall the incident of the shelves from Auburn?      A. No, sir.

Q. You had no contact with that. To shorten this, are there any other matters brought up here in the testimony which I haven't asked you about or which you wish to explain?

A. I can't think of any.

Mr. Seering: You may examine.

#### Cross-Examination

By Mr. Evans:

Q. Mr. Hallam, do I understand that it is a common practice among transfer companies to drag boxes down stairs rather than carry them down?

(Testimony of S. W. Hallam.)

A. I didn't say it was a common practice. I said it isn't uncommon for them to do it. I mean it does happen.

Q. Is it in accordance with what would be considered proper handling?      A. No, sir, it isn't.

Mr. Evans: No further questions.

(Witness excused.)

Mr. Seering: Plaintiff rests.

The Court: Any further evidence on the part of the defendant?

Mr. Evans: No further evidence.

May I ask at this time that the witnesses be excused?

The Court: All the witnesses are excused.

Now, obviously we haven't time this afternoon to hear any substantial amount of argument and counsel doubtless want to argue this case in a manner that is agreeable to them. We will have to arrange some other time to do it because I do not feel disposed to delay the trial that is scheduled to begin tomorrow. Is there any reason why counsel could not appear before the Court sometime Friday and argue this case?

(Argument of counsel.)

The Court: Counsel in this case are excused until 11:00 o'clock Friday morning.

(At 4:15 o'clock p.m., Wednesday, August 3, 1949, the above entitled cause and proceedings was adjourned to 11:00 a.m., Friday, August 5, 1949, at which time further proceedings were had as follows:) [313]

August 5, 1949, 11:00 o'Clock a.m.

(Oral argument was then submitted by respective counsel for plaintiff and defendant.)

### COURT'S DECISION

The Court: If in this case there was involved the work only of the witness, L. H. Doolittle, and his conduct of his company's performance of this contract here involved, the Court would find it almost impossible to conclude that he did or omitted to do any act which tended to breach this contract but, unfortunately for the plaintiff, there is involved in addition to that person's services the services and work of other persons who were employees of the plaintiff company.

I will not attempt to name them, but the evidence, and a preponderance thereof, clearly convinces the Court, and the Court finds, concludes and decides that there was not reasonable work done under this contract on the part of the plaintiff corporation or organization and that as a result of the lack, in some instances, of faithful performance of the work assigned to plaintiff under this contract [314] in respect to the services of various ones of the plaintiff's employees, that the defendant had the right for some time before the contract was terminated

to terminate the contract upon the giving of reasonable notice, but that the notice given by the defendant to the plaintiff of intention to terminate the contract, or as to the effective date of the termination, was not reasonable and that the notification given by defendant to plaintiff of cancellation was unreasonable on the defendant's part and that as a result of such unreasonableness the plaintiff reasonably sustained expenses in the total sum of \$1500 on account of truck lease expense, warehouse rental and stenographer salaries, for which sum plaintiff is entitled to recover against the defendant in this action.

The case is continued to August 15th, at 10:00 o'clock in the forenoon for the purposes mentioned by the Court. Those connected with the case are excused until that time.

(At 12:30 o'clock p.m., Friday, August 5, 1949, the above entitled and numbered cause was adjourned to 10:00 o'clock a.m., August 15, 1949, at which time further proceedings were had as follows:) [315]

### CERTIFICATE

I, Bernard Ayres, do hereby certify that I was the official court reporter for the above entitled court between August 1, 1949, and August 6, 1949, and as such was in attendance upon the hearing of the foregoing matter.

I further certify that the above transcript is a

true and correct record of the matters as therein set forth.

/s/ BERNARD AYRES,  
Court Reporter.

August 15, 1949, 10:00 a.m.

The Court: According to my information there is to come regularly before the court at this time the matter of settling and entering the findings of fact and conclusions of law and judgment in the case of Foster Transfer Company against the United States. Are the parties ready?

Mr. Seering: They are.

The Court: If you have papers which you have approved as to form, you may come forward. If there is to be a contest, I will hear it.

Mr. Seering: I have served those on counsel.

The Court: Come forward, Mr. Evans, if you wish to make a statement.

Mr. Evans: I might say, Your Honor, that the findings of fact and conclusions of law are identical, except for the last two paragraphs. Paragraph VI in the one I have prepared is in addition to what counsel prepared in his findings of fact, and the itemization in Paragraph VII is in addition to counsel's prepared findings of fact. Except for that, I copied his.

The Court: Paragraph VII. What is the detail there that you did in addition to his? [317]

Mr. Evans: The one which counsel prepared had a period after some fifteen hundred dollars. That



which follows, the figures \$1,500.00, is added in the one which I prepared itemizing what the fifteen hundred dollars amounted to.

The Court: There is a detail connected with that matter which I would like to explain and which may not be exactly as stated, although that was part of the court's rationalization in the matter. It was upon consideration inspired by those items that the court did award the fifteen hundred dollars. The basis of recovery was not to coincide specifically with those items, but by reason of those things the court thought that that sum was just.

Mr. Seering: That was the reason I used this language in Paragraph VI: "that these expenses consisted of trucks and warehouse leased by plaintiff and salaries of office employees whose services will no longer be necessary after the cancellation of the contract" without itemizing them specifically. I so understood in your oral decision that no specific figure was used.

The Court: Responding now to Government counsel's request as to paragraph numbered VI in the Government's for, I would say that this is a more accurate statement, a more complete statement, with the condition to be stated to this effect: 'upon giving reasonable [318] notice thereof'; but in this case no notice of any kind was given. I believe that would be sufficient.

Mr. Evans: Those are words which the court believes should be added?

The Court: If I should adopt that number VI

or anything in substance amounting to something of that kind, I would feel certain that some such statement as I last indicated would be appropriate and would make the finding more suitable than it now is.

Mr. Seering: Has Your Honor read Paragraph VI in my proposed form?

The Court: I have not.

Mr. Seering: I was just wondering whether that met Your Honor's requirement in that particular.

The Court: I don't recall from the evidence that any specific notice was given. What do counsel recall?

Mr. Seering: A letter was mailed on the 20th and received on the 21st and effective on the 28th.

The Court: Effective on the 28th?

Mr. Seering: Yes.

The Court: Considering that further, and the provisions in it specially mentioned by counsel in the two respective forms, namely, the form requested by plaintiff and the form or forms requested by defendant, the court thinks that the form in those specially requested by [319] plaintiff is more in keeping with the court's decision and does carry into effect the court's opinion and decision as finally made.

My reason for thinking that, gentlemen, is that I am positive that if this litigation were pending between private persons exclusively as distinguished from being litigation pending between the Government and a private individual, this court and other

courts would feel that this notice under the contract provisions here involved introduced a hardship and expense upon the plaintiff not justified by virtue of any right under the contract possessed by the party terminating the contract. I do not know of any reason why a different rule applies to the Government in a case where it is a party as distinguished from a case involving only private parties; so the court adopts the findings and conclusions proposed by the plaintiff in this case.

Mr. Evans: In order to take an exception, Your Honor, it is my understanding that the rules require that a person taking the exception make known to the court the reason for the exception, and at this time, for the purpose of the record, I would like to do that.

The Court: I do not think that the defendant is right, and I think that what I have said sufficiently covers any right in that direction which the losing party [320] might have. The record will show the court's statement of reasons.

Mr. Evans: What I mean is, in order for me to properly take an exception I understand it is my duty to make known to the court the reason for my exceptions. I don't want to burden the court.

The Court: If you wish to make any further statement of reasons for exceptions, Mr. Evans, without being authorized by the court to make an argument, you may feel free to make a statement for the record, if you feel a statement is needed.

Mr. Evans: The defendant excepts to the find-

ings of fact and conclusions of law just entered for the reason that the same are not supported by the evidence; that the findings of fact and conclusions of law are contrary to law in that they vary the terms of a written contract.

The Court: Exceptions allowed.

Would you, Mr. Evans, like the court to note on your requested form the fact that they have been presented on this form and that the court declines to enter them?

Mr. Evans: I don't believe that is necessary. I really have very little dispute with opposing counsel's.

The Court: Does anyone know what the costs are properly taxable in this case?

Mr. Seering: I'll see if we can agree on them, Your Honor.

The Court: See if you can.

Mr. Seering: \$43.80.

Mr. Evans: That is agreed.

The Court: Do counsel on both sides agree that under the statute it is within the court's discretion to award costs taxable in this case?

Mr. Seering: Yes.

The Court: Will you advise the court of the items which you have considered in arriving at that estimate?

Mr. Seering: \$15.00 filing fee, \$20.00 attorney fee and \$8.80 witness fee for four witnesses.

The Court: At how much?

Mr. Seering: I understand it is \$2.20. I'm not advised as to the correct figure.

The Court: \$2.20. Four would be \$8.80.

Mr. Seering: Counsel draws my attention to the fact that witness fees have gone up to \$4.00 daily. That would make \$16.00.

The Court: \$51.00, instead of the other figure. See if you agree.

Mr. Seering: That is correct. [322]

The Court: \$51.80.

Let this judgment be now entered in that case, and in that case counsel are excused. [323]

### CERTIFICATE

I, Joseph R. Wheeling, do hereby certify that I was the official court reporter for the above-entitled court between August 8, 1949 and August 20, 1949, and as such was in attendance upon the hearing of the foregoing matter. I further certify that the above transcript is a true and correct record of the matters as therein set forth.

/s/ JOSEPH R. WHEELING.

[Endorsed]: Filed November 14, 1949. [324]

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[Title of District Court and Cause.]

### CERTIFICATE OF CLERK U. S. DISTRICT COURT TO RECORD ON APPEAL

United States of America,  
Western District of Washington—ss.

I, Millard P. Thomas, Clerk of the United States District Court for the Western District of Wash-



ington, do hereby certify that pursuant to the provisions of Subdivision 1 of Rule 11 as Amended of the United States Court of Appeals for the Ninth Circuit, and Rule 75(O) of the Federal Rules of Civil Procedure, I am transmitting herewith pursuant to designation of counsel, all of the original pleadings on file and of record in said cause in my office at Seattle, as set forth below, and that said pleadings, together with Plaintiff's exhibits numbered 1 to 8, inclusive, and Defendant's exhibits numbered A-1 to A-13, inclusive, offered in evidence at the trial of said cause constitute the record on appeal from the Judgment for Plaintiff filed August 15, 1949, and entered August 16, 1949, to the United States Court of Appeals for the Ninth Circuit, to wit:

1. Complaint
2. Summons and Marshal's Return
3. Affidavit of Mailing
4. Appearance for Defendant
5. Answer of Defendant
6. Reply of Plaintiff
7. Praecipe for Subpoena (J. J. Walsh)
8. Defendant's Memorandum of Authorities
9. Marshal's Return on Subpoena (J. J. Walsh)
10. Findings of Fact and Conclusion of Law
11. Judgment (Filed August 15, 1949)



11a. Marshal's Return on Subpoena (Hallan and 2)

12. Defendant's Notice of Appeal

13. Stipulation releasing file and exhibits to Court Reporter for 20 days

14. Order releasing file and exhibits to Court Reporter

15. Court Reporter's Transcript of Testimony and Proceedings

16. Statement of Points Relied Upon by Defendant

17. Designation of Record on Appeal

In Witness Whereof I have hereunto set my hand and affixed the official seal of said District Court at Seattle, this 15th day of November, 1949.

MILLARD P. THOMAS,  
Clerk.

[Seal]     /s/ TRUMAN EGGER,  
Chief Deputy.

[Endorsed]: No. 12401. United States Court of Appeals for the Ninth Circuit. United States of America, Appellant, vs. Foster Transfer Company, a Corporation, Appellee. Transcript of Record. Appeal from the United States District Court for the Western District of Washington, Northern Division.

Filed November 17, 1949.

/s/ PAUL P. O'BRIEN,  
Clerk of the United States Court of Appeals for  
the Ninth Circuit.

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United States Court of Appeals  
for the Ninth Circuit  
No. 12401

UNITED STATES OF AMERICA,  
Appellant,  
vs.

FOSTER TRANSFER COMPANY, a Washington  
corporation,  
Appellee:

STATEMENT OF POINTS RELIED UPON

Appellant, United States of America, proposes on its appeal to the United States Court of Appeals for the Ninth Circuit to rely upon the following points as error:

1. The court erred in finding, concluding and adjudging that the terms of the written contract between the appellant and the appellee required the appellant to give the appellee notice of cancellation of the contract a reasonable time before the effective date of such cancellation.

2. The court erred in finding, concluding and adjudging that the period of time between the giving of the notice of cancellation of the contract by the appellant and the effective date of the cancellation was unreasonable.

3. The court erred in questioning witnesses on issues not raised by the pleadings or evidence, introduced by the parties and granting the appellee damages based on such testimony so adduced.

4. The court erred in finding, concluding and adjudging that the appellee recover damages against the appellant for items not mentioned in the pleadings nor raised by evidence offered by the parties.

5. The weight of the evidence is contrary to the findings of fact.

6. The conclusions of law are contrary to the law governing the subject matter of the controversy.

7. The court erred in refusing to admit appellant's Exhibit A-8 in evidence.

8. The court erred in holding the appellee was entitled to judgment against the appellant.

9. The court erred in not finding in favor of the appellant.

/s/ J. CHARLES DENNIS,  
U. S. Attorney.

/s/ VAUGHN E. EVANS,  
Asst. U. S. Attorney.

Receipt of copy acknowledged.

[Endorsed]: Filed November 17, 1949.

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[Title of Court of Appeals and Cause.]

#### DESIGNATION OF RECORD

Comes now the appellant, United States of America, and designates the following as the record to be prepared on appeal in the above entitled cause:

1. The entire transcript of proceedings.
2. All pleadings.
3. Exhibits 5, 6, A-1, A-2, A-6, A-7, A-8, A-10, A-11, A-12 and A-13.

/s/ J. CHARLES DENNIS,  
U. S. Attorney.

/s/ VAUGHN E. EVANS,  
Asst. U. S. Attorney,  
Attorneys for Appellant.

Receipt of copy acknowledged.

[Endorsed]: Filed November 17, 1949.

[Title of Court of Appeals and Cause.]

## STIPULATION

It is hereby Agreed and Stipulated by and between the parties to the above entitled appeal by and through their respective counsel of record that exhibit A-6 admitted in evidence in the District Court contains true and complete copies of exhibits 1, 2, 3, 4, A-3, A-4, A-5 and A-9, and therefore said exhibits last mentioned may be omitted from the record on appeal but that the copies of the same contained in exhibit A-6 may be considered by the court in lieu thereof.

It is Further Agreed and Stipulated that the exhibits so omitted from the record will be found on the corresponding numbered pages in exhibit A-6 as follows:

Exhibit Number	Page in Exhibit A-6
1	24
2	13
3	6
4 (4 documents)	51, 48, 49, 43
A-3	15
A-4	36
A-5	38
A-9	34

Dated at Seattle, Washington this 15th day of November, 1949.

/s/ J. CHARLES DENNIS,  
U. S. Attorney.

/s/ VAUGHN E. EVANS,  
Asst. U. S. Attorney,  
Attorneys for Appellant.

/s/HAROLD A. SEERING,  
Attorney for Appellee.

So Ordered:

/s/ WILLIAM DENMAN,  
Chief Judge.  
/s/ WILLIAM HEALY,  
/s/ HOMER T. BONE,  
United States Circuit Judges.

[Endorsed]: Filed November 17, 1949.

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In the United States Court of Appeals  
for the Ninth Circuit

No. 12401

UNITED STATES OF AMERICA,  
Appellant,  
vs.

FOSTER TRANSFER COMPANY, a Washington  
corporation,  
Appellee.

### ORDER RE ORIGINAL EXHIBITS

This matter having come on on application of the appellant for permission to have the Court consider all the exhibits in the above entitled appeal in their original form and the parties to said appeal having



consented to such procedure by stipulation filed herein, it is hereby,

Ordered, Adjudged and Decreed that all of the exhibits now on file with the Clerk of this Court may be considered by the Court in their original form without the same being printed in the record.

Done this 11th day of January, 1950.

/s/ WILLIAM DENMAN,  
Judge.

/s/ WILLIAM HEALY,  
/s/ HOMER BONE,

Judges U. S. Court of Appeals  
for the Ninth Circuit.

The Appellee hereby consents to the entry of the foregoing order.

MAXWELL, SEERING,  
JONES & MERRITT,

By /s/ R. W. MAXWELL,  
Counsel for Appellee.